Supreme Court, U.S.
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No. 01-1120

In The
Supreme Court of the United States

DAVID MEYER, individually and in his capacity as president and designated officer/broker of TRIAD, INC., doing business as TRIAD REALTORS,

Petitioner,

vs.

EMMA MARY ELLEN HOLLEY, DAVID HOLLEY, MICHAEL HOLLEY, a minor, and BROOKS BAUER, individually and on behalf of the general public,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR RESPONDENTS

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QUESTIONS PRESENTED

1. Whether petitioner, as the licensed officer/broker of a corporate real estate firm, through whom the corporation is licensed and on whom the license law imposes a personal duty to supervise and control the corporation's licensed activities, is liable for Fair Housing Act violations committed by salespersons acting under the corporation's license.

2. Whether petitioner, as the licensed officer/broker of a corporate real estate firm, may be liable under the Fair Housing Act for his negligent supervision of the corporation's licensed salespersons.

3. Whether petitioner, as the sole shareholder or controlling individual of a corporate real estate firm, may be liable under traditional "veil piercing" principles or the "alter ego" doctrine for his company's Fair Housing Act liability.

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STATUTES AND REGULATIONS INVOLVED

1. The Fair Housing Act ("FHA" or the "Act"), 42 U.S.C. § 3601 *et seq.*, the relevant provisions of which are printed in Respondents' Appendix ("Resp. App.") 11-21.

2. 24 C.F.R. § 100.20 (2002) and former 24 C.F.R. § 103.20 (1999). Resp. App. 22.

3. The California Real Estate Law, California Business & Professions Code § 10000 *et seq.* (West 1987 & Supp. 2002). Resp. App. 23-47.

4. California Code of Regulations, tit. 10, § 2700 *et seq.* (2002). Resp. App. 48-62.

STATEMENT OF THE CASE

Respondents are Emma Mary Ellen Holley who is African-American, her husband David Holley who is Caucasian, their adopted son Michael Holley who is African-American, and Brooks Bauer, a general contractor. JA 3-4. This action arose out of the Holley family's attempt to buy a house being constructed by Bauer in Twenty-Nine Palms, California. JA 8-13. The house was listed for sale by Triad Realtors. JA 8.

In November 1996, the Holleys toured the house with Triad salesperson Terri Stump and decided to make an offer. JA 9. That same evening, Mrs. Holley called Bauer, told him she was interested in his house, and discussed the terms of their proposed offer, which he said sounded "pretty good." JA 10. Bauer told Mrs. Holley that she would have to make the offer through Triad. JA 10. Bauer then called Triad salesperson Grove Crank and told him of

the Holleys' intention to make an offer and that he was looking forward to receiving it. JA 10.

Later that evening, Mrs. Holley received a call from Stump, in which she stated that other Triad salespersons did not think the Holleys' offer was sufficient. JA 10-11. The Holleys declined to raise their offer. JA 11. The next day, at Triad's office, Stump told the Holleys that, after speaking with Crank and another Triad salesperson, they had decided the Holleys' offer was too low to present to Bauer. JA 11. The following week, Bauer spoke with Crank, inquiring about the Holleys' anticipated offer. JA 13. Crank said to Bauer, "No, you don't want to f*** with those niggers," and referred to the Holleys as a "salt and pepper team." JA 13. Bauer assumed the Holleys had changed their minds about the offer. JA 13-14. Bauer ran into Mrs. Holley several months later, and learned that the Holleys had, in fact, wanted to purchase his house, but that Triad had "cost" him the sale. JA 14. On November 14, 1997, respondents filed suit against Crank and Triad, alleging, *inter alia*, that the defendants had discriminated on the basis of race in violation of the federal Fair Housing Act ("FHA" or "Act"), 42 U.S.C. §§ 3601 *et seq.* (the "*Triad*" case, No. 97-8368). Record [case 97-8368] 1.[1]

During the *Triad* case, respondents became aware that David Meyer was Triad's licensed officer/broker. Respondents twice moved to add Meyer as an additional defendant in the *Triad* case, but the district court denied

[1] The Clerk of Court has requested that the district court transmit the record in the *Triad* case, case 97-8368, with the record in this case, because they were consolidated in the district court (Record 10) and filings in this case were at times docketed in the *Triad* case.

those motions. Record [case 97-8368] 11-12, 17, 42-43, 55. In October 1998, respondents commenced this separate action against Meyer, alleging the same FHA violations they had alleged against Crank and Triad in the *Triad* case. JA 2-24. The following facts relate to Meyer and his relationships to Crank and Triad. These facts, and those stated in the text of respondents' arguments, are taken from respondents' complaint and the materials submitted in connection with Meyer's summary judgment motion.[2]

Meyer had three roles at Triad: (1) officer/broker; (2) president; and (3) sole shareholder. JAL 14-16, 29-30, 36-38, 44-46, 48-50, 120-23. Meyer was the only corporate officer of Triad who was qualified to hold a broker's license and who was therefore responsible for Triad's initial receipt, and subsequent maintenance, of its corporate broker's license. JA 4, 7-8; see pp. 13-21, *infra*.

As of 1996, when Crank discriminated against the Holleys, Meyer had been a licensed California real estate broker for almost 25 years. JAL 79. He was the founding officer/broker of Triad in 1974, as well as one of the founding shareholders. JAL 78-79, 122. He had been president of Triad for almost 20 years. JAL 121. Meyer had been a member of the California Association of REALTORS®

[2] This case involves review of both the district court's decision granting in part petitioner's motion to dismiss and the district court's subsequent decision granting petitioner's motion for summary judgment. With respect to the former, this Court "must accept as true all of the factual allegations contained in the complaint." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, ___, 122 S. Ct. 992, 995 n.1 (2002). With respect to the latter, all factual matters in the record must be construed most favorably to respondents as the parties opposing that motion. *E.g.*, *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

("CAR") and the National Association of REALTORS® ("NAR") for over 25 years. JAL 128-129. Crank began to work as a Triad salesperson under Meyer's supervision in 1980. JA 40; JAL 60-74.

Although Meyer was Triad's sole shareholder from 1978 until at least February 1995, he claims that he "transferred" ownership of Triad to Crank at that time, despite admitting that no documents exist reflecting that alleged transaction. JAL 122-126. The transfer of ownership of the corporation allegedly took place when, in Meyer's conversations with Crank, they "decided that [Crank] would carry on with the company, and [Meyer] would continue only as its principal broker until such time as [Crank] could get his [broker's] license." JAL 124.[3] Crank never did obtain his broker's license. JA 40-41.

Meyer continued to serve as Triad's officer/broker and president and, as such, was the sponsoring broker for the renewal of each of the Triad salespersons' licenses. JAL 139-40. Although he acknowledged that the operation of Triad was still his responsibility, Meyer claimed that during the time period of the alleged discrimination, he was no longer "involved in the day-to-day management of the business," although "technically . . . still an officer with the corporation." JAL 145, 151. Between April 1995 and August 1998, Meyer did not personally supervise Triad's salespersons, but relied on Crank to do so. JAL 136-37.

[3] Respondents alleged in their complaint that Meyer was Triad's sole shareholder at the time of the discrimination. JA 7. Although Meyer denied ownership, the court of appeals held that, given the unusual circumstances of the "transfer" of the corporation, the issue of Meyer's ownership was disputed and should go to trial. JA 7; 65 n.4.

It is undisputed that Crank and Triad are unable to pay any judgment in this case. Record 15 & 43, at 30, 39-41; Record [case 97-8368], 98 at 3, ¶ 8. The district court ruled in a related case that Triad's insurance policy did not cover racial discrimination claims like respondents' and provided only $10,000 for the expenses of defending such claims.[4]

The district court granted in part Meyer's motion to dismiss and later entered summary judgment in Meyer's favor. JA 25-35, 48-55. Thereafter, at the request of the parties, the court stayed the *Triad* action, and certified its judgment in this case pursuant to Fed.R.Civ.P. 54(b), so that the issue of Meyer's liability could be decided. Pet. App. 4; Record [case 97-8368] 107.

On July 31, 2001, the Ninth Circuit reversed the district court's dismissal of the FHA claims against Meyer. JA 71. The court of appeals held that the district court had erred in ruling that Meyer could not be vicariously liable under the FHA based on his positions as Triad's president and officer/broker. JA 62, 71. The court of appeals also held that summary judgment for Meyer was inappropriate with respect to his role as Triad's sole owner, because there was a disputed factual issue as to whether Meyer owned Triad at the time of Crank's discrimination, which, if

[4] Respondents have lodged with the Clerk of Court 12 copies of the district court's summary judgment order in the related case *Legion Insur. Co. v. Crank*, case 98-8617, which was referenced by the district court in its orders in this case. That order also was before the court of appeals. JA 27, 50; Resp. Ct. App. Ex. Rec. 245; Case 98-8617, docket no. 24 at 5-6, 14.

resolved in respondents' favor, could make Meyer liable. JA 63-67, 71.

On January 28, 2002, Meyer filed a petition for a writ of certiorari with this Court, which granted the writ on May 20, 2002.

SUMMARY OF ARGUMENT

1. Vicarious liability issues under the FHA should be decided based on common-law agency principles, as adapted to the FHA's objectives. Cf. *Kolstad v. American Dental Ass'n*, 527 U.S. 526, 545 (1999) (Title VII case). Under common-law principles, a "master is subject to liability for the torts of his servants committed while acting in the scope of their employment." Restatement (Second) of Agency § 219(1) (1957). A master-servant, or principal-agent, relationship is based on the agent acting subject to the control of the principal. See Restatement §§ 1, 220(1).

Meyer's relation to Crank was that of principal-agent. Meyer was not just an ordinary corporate manager occupying a senior position in Triad's hierarchy. Based on California real estate law – whose licensing requirements are reflected in similar laws in all other states – Meyer, the officer/broker in charge of supervising Crank, had the legal duty to control Crank's activities. Even when a broker practices in a corporate form, state law requires that this control be exercised by a broker-qualified *individual*, and that this designated supervising broker be responsible for the firm's salespersons, the same as are non-corporate brokers.

2. Real estate brokerage is a highly regulated business. Each state has a detailed set of laws and regulations, but virtually all states have licensing systems that include the following basic features: (a) two levels of licenses, with the higher level licensee ("broker") being allowed to deal with the public and the lower level licensee ("salesperson") being allowed only to work for a broker; (b) brokers are legally responsible for any liability caused by their salespersons; (c) while most brokers operate as sole proprietorships, California and many other states allow them to use the corporate form; and (d) states that allow corporate brokers require that the company appoint an individual supervising broker who meets the same licensing qualifications as for an individual broker and who must exercise the same degree of control over the firm's salespersons as does an individual broker over his. In addition, California, like most other states, specifically requires that brokers ensure their salespersons' compliance with fair housing laws.

Meyer was Triad's designated officer/broker from the time he founded the firm in 1974. As a result, he had the right, indeed the duty, to control Crank's license-related activities, thereby making him Crank's principal for acts under the license.

3. Because all brokers, regardless of their business form, have the same duty to supervise and control their salespersons, all should be liable for the FHA violations of the salespersons acting under their licenses. Vicarious liability for brokers is supported not only by common-law principles, but also by the FHA's objectives, as reflected in the following: (a) the FHA's legislative history, showing Congress' rejection of the idea that liability should turn on changes in business forms; (b) a large body of early judicial

decisions endorsing brokers' vicarious liability, regardless of corporate form; (c) U.S. Department of Housing and Urban Development ("HUD") regulations providing for vicarious liability for anyone who has "the right to direct or control" the person violating the FHA; (d) Congress' endorsement of the early judicial decisions and HUD's first "right to direct or control" regulation in the 1988 Fair Housing Amendments Act; and (e) post-1988 decisions by lower courts and HUD administrative law judges ("ALJs") adding to the overwhelming consensus that brokers in Meyer's position should be liable for their agents' discrimination, regardless of their business form.

4. Holding Meyer liable is fair. The rule applied to him would be the same one that governs the vast majority of brokers in the United States, who have not incorporated and who are subject to the common-law principle of *respondeat superior*. Meyer's argument for non-liability is based not only on his adoption of a corporate form, but also on his claimed "right" to thereafter abdicate his duties to supervise and control his company's salespersons. To hold that this conduct insulates Meyer from FHA liability would be to create a blueprint for brokers to exempt themselves from the FHA, thereby frustrating the FHA's primary objective of ending discrimination.

5. Even if Meyer is not vicariously liable as Crank's principal, he should be liable under other well-established common-law principles that are applicable in this case. First, because Meyer was a licensee and Crank committed his FHA violations while operating under that license, Meyer is liable under Restatement § 214, cmt. *b*: "When a license is required for the performance of acts, one having a license who delegates performance of the acts to another is subject to liability for the negligence of the other." The

key license in this case was Meyer's, not Triad's. The qualifications necessary for a broker's license (*e.g.*, passing a written examination and completing certain educational requirements) could only be satisfied by Meyer, not Triad. Without Meyer's license, Triad could exist, but it could not engage in brokerage activities, including the employment of Crank as a salesperson.

Second, Meyer's negligence in supervising and controlling Crank, including the improper delegation of his broker duties to Crank, justifies holding Meyer liable under traditional corporate law principles that impose liability on corporate officers who breach their statutory duties, here imposed by state licensing laws. Beginning in 1995, over a year before the events of this case, Meyer abandoned his duties at Triad, even though he remained legally responsible for ensuring Triad's compliance with real estate and fair housing laws. Meyer's abdication of his duties is a classic example of negligent, if not reckless, supervision, for which licensed professionals are generally held liable regardless of their corporate form and for which common-law principles provide a remedy, as should the FHA.

6. Meyer's conduct as Triad's sole stockholder provides an independent ground for making him liable under traditional corporate "veil piercing" and "alter ego" principles. Under Meyer's control, Triad failed to observe basic corporate formalities and was so underfunded that it is judgment-proof. Either of these facts is sufficient to justify veil piercing in an FHA case.

7. Thus, the judgment of the court of appeals that Meyer may be liable for Crank's illegal discrimination was correct. It is axiomatic that "this Court reviews judgments, not opinions." *Chevron U.S.A. Inc. v. Natural Resources*

Defense Council, Inc., 467 U.S. 837, 842 (1984). The court of appeals adopted a vicarious liability standard that would govern in all FHA cases. But such a broad rule is unnecessary here. All that is needed is a uniform rule of vicarious liability under the FHA applicable to corporate officer/brokers charged with the duty of supervising the licensed activities of the corporation. Based on common-law principles, adapted to the objectives of the FHA, the rule should be that a corporation's officer/broker, charged under state licensing law with the duty to supervise and control the licensed activities of corporate salespersons, is liable for the FHA violations committed by those salespersons acting under the corporation's license.

ARGUMENT

I. BASED ON COMMON-LAW PRINCIPLES AND CONSISTENT WITH THE POLICIES OF THE FAIR HOUSING ACT, A CORPORATION'S OFFICER/BROKER, CHARGED WITH THE DUTY TO SUPERVISE AND CONTROL THE LICENSED ACTIVITIES OF SALESPERSONS, IS VICARIOUSLY LIABLE FOR FAIR HOUSING ACT VIOLATIONS COMMITTED BY THOSE SALESPERSONS ACTING UNDER THE CORPORATION'S LICENSE.

The parties, their *amici*, and the United States agree that although the text of the FHA does not expressly address the issue of vicarious liability, the Act incorporates traditional common-law principles of torts and agency, including the doctrine of *respondeat superior*. Early in the Act's history, this Court ruled that an action under this statute "sounds basically in tort" and "is analogous to a number of tort actions recognized at common law." *Curtis*

v. Loether, 415 U.S. 189, 195 (1974). In determining the scope of vicarious liability under a federal civil rights statute, however, the Court does not incorporate the tort or agency law of any particular state, but rather looks for guidance to general common-law principles and then adapts those principles to carry out the statute's objectives. *Kolstad v. American Dental Ass'n*, 527 U.S. at 545 (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 802 n.3 (1998)) (following this two-step analysis in Title VII case); *Smith v. Wade*, 461 U.S. 30, 34 (1983) (same in § 1983 case).

The Restatement (Second) of Agency (1957) ("Restatement") is this Court's traditional starting point for determining common-law principles of vicarious liability for tortious conduct. *Kolstad*, 527 U.S. at 542; *Faragher*, 524 U.S. at 802. The Restatement explains that agency is "the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act," Restatement § 1, and defines the doctrine of *respondeat superior* as "[a] master is subject to liability for the torts of his servants committed while acting in the scope of their employment." Restatement § 219(1) (quoted with approval in *Faragher*, 524 U.S. at 793). That doctrine is a well-accepted part of the common law of torts. *Philadelphia and Reading Railroad Co. v. Derby*, 14 How. (55 U.S.) 468, 486 (1852); see also *General Bldg. Contractors Ass'n v. Pennsylvania*, 458 U.S. 375, 392 (1982) (citing Restatement §§ 215-216, 219; W. Prosser, *Law of Torts* §§ 69-70 (4th ed. 1971); W. Seavey, *Law of Agency* § 83 (1964)).

Before these general common-law principles can be applied in this case, however, the nature of the relationship between Meyer, Triad, and Crank must be examined. This relationship is not, as petitioner claims, solely a creature of corporate law. Instead, it is rooted in and governed by California real estate licensing law. Thus, this case requires a *three*-step analysis: (1) examining the state licensing law out of which the officer/broker-salesperson relationship arises; (2) applying common-law principles to that relationship; and (3) adapting these common-law principles as necessary to ensure that they carry out the FHA's objectives.

Consistent application of the FHA requires the adoption of a uniform federal standard addressing real estate broker liability for the acts of salespersons. There is no dispute that an individual broker licensee is liable for torts committed by a salesperson acting under the individual's license. The rule that should arise out of this case is that a corporation's officer/broker, charged under state licensing law with the duty to supervise and control the licensed activities of corporate salespersons, is similarly liable for the FHA violations committed by those salespersons acting under the corporation's license.

The key to this case, all but ignored by petitioner, is Meyer's status as a licensed real estate officer/broker. Petitioner looks to the corporate form in which Meyer did business and stops there, choosing not to discuss the professional and fiduciary duties imposed on him – and all brokers nationwide – by the licensing laws under which brokers operate regardless of their business form. The duties imposed by state licensing laws, however, are crucial to understanding why Meyer should be held personally responsible for Crank's discrimination.

A. STATE LICENSING LAW ESTABLISHES THAT MEYER AND CRANK HAD A PRINCIPAL-AGENT RELATIONSHIP FOR PURPOSES OF THE FHA.

As the designated officer/broker of Triad, Meyer was not just another corporate officer. First and foremost, he was the state licensee whose qualifications permitted Triad to operate as a corporate broker and who was personally responsible for Triad's salespersons. Although California and other states allow a broker to hold his license in a corporate form, those same laws impose on the corporate officer/broker a personal duty to supervise salespersons and to ensure their compliance with the law. Respondents do not dispute that Triad's corporate form may protect Meyer from personal liability for torts arising out of corporate activities for which a real estate license is not required. Rather, respondents contend that Triad's corporate form does not protect Meyer from personal liability for torts arising out of that subset of corporate activities for which a real estate license is required.

1. For decades before enactment of the FHA, state real estate laws defined the broker-salesperson relationship as one of principal-agent. State regulation of the real estate industry began in California in 1916. 1916 Cal. Stat. c. 758. By 1949, 36 states had adopted licensing laws, most of which were based on the California law. 10 Patrick J. Rohan *et al.*, *Real Estate Brokerage Law and Practice* § 2.01[2] (2001). Today, California and all other states require all real estate brokers and salespersons to be licensed, imposing examination and educational prerequisites prior to issuance of a license, and in all but two states, completion of continuing education prior to license

renewal. See Cal. Bus. & Prof. ("B&P") Code §§ 10150.6, 10151, 10152, 10153 & 10153.2 (West 1987 & Supp. 2002); 10A Rohan, *supra*, §§ 6.03, 6.04[2], 6.07 (compilation of basic licensing requirements for all 50 states and the District of Columbia). Real estate brokerage has evolved into a highly regulated profession. As recognized in California and other states, a primary purpose of that regulation is to protect the public. *Norman v. Department of Real Estate*, 93 Cal.App.3d 768, 778, 155 Cal.Rptr. 715 (1979); 10A Rohan, *supra*, § 6.01, at 6-4.

The relationship between broker and salesperson, to which the Restatement principles are to be applied here, is prescribed by state law. Under the licensing law of California and the other states, there are generally two classes of licensee – real estate broker and real estate salesperson. See, *e.g.*, B&P Code §§ 10011, 10131, 10132 (West 1987). See generally Charles J. Jacobus, *Real Estate Principles* 386 (Prentice-Hall: 8th ed. 1999). A salesperson can provide services only under the direction and control of a licensed real estate broker. B&P Code §§ 10132, 10137. The licensed broker performs the services for the public, and the salesperson performs services for the broker under whom he is licensed. *Grand v. Griesinger*, 160 Cal.App.2d 397, 405, 325 P.2d 475 (1958). Thus, the salesperson's ability to function in the real estate business is totally dependent on his agency relationship with the broker. B&P Code § 10132. The other part of that equation is that the broker is required to exercise reasonable supervision over the salesperson. B&P Code § 10177(h) (West 1987); Cal. Code Reg., tit. 10, § 2725 (2002); *Grand*, 160 Cal.App.2d at 405.

The special relationship between broker and salesperson, dictated by state law, establishes the broker as principal and the salesperson as agent. B&P Code § 10132; *Gipson v. Davis Realty Co.*, 215 Cal.App.2d 190, 206, 30 Cal.Rptr. 253 (1963). Because the "salesperson is a means by which a broker can expand his sales force" by gaining more listings, sales, and commissions, the broker must "take ultimate responsibility for any mistakes the salespersons make." Jacobus, *supra*, at 386. Thus, the law is undisputed that an individual broker licensee is vicariously liable for the torts of his salespersons committed within the scope of their licensed activities. *Gipson*, 215 Cal.App.2d at 209-10. See Br. of *Amicus Curiae* California Association of REALTORS® ("CAR Br.") 7.

2. Although states allow brokers to do business in a number of different forms, all licenses are issued based on the individual broker's qualifications. A broker's license may be held in several different business forms. In each, however, the obligation to ensure the salespersons' compliance with the law runs as a personal duty to the person who is the licensed professional. Although the business form chosen by the broker may change, that change does not alter the fundamental agency relationship between broker and salesperson.

The simplest business form for a broker is a sole proprietorship under the broker's own name or a fictitious name. Jacobus, *supra*, at 392. A broker can also operate in a partnership with other brokers or as a corporation. *Id.* Most states allow brokers to do business in the corporate form. See state law citations, Resp. App. 1-3. When a broker decides to use a corporate form, the usual practice, as was followed here, is that only a single individual at the firm needs to meet the broker qualifications. Arthur

Gaudio, *Real Estate Brokerage Law*, § 48, p. 60 (1987). When these requirements are met, the state may issue a single license covering both the individual and the firm, as occurs in California, or, as in the majority of states, the state may require a separate license for each. *Id.*, at 60 n.5. See state law citations, Resp. App. 3-5. In either situation, the states uniformly allow the firm itself to hold a broker's license and engage in real estate activities only so long as the *individual* in question (or a like-qualified substitute) continues to meet the applicable licensing qualifications for a broker. *Id.*

The law of California is illustrative. A corporation may hold a real estate broker's license, but only if it designates an officer to serve as the officer/broker of the corporation. B&P Code §§ 10158 & 10211. The officer/broker must be a person who is qualified to hold a broker's license. *Id.* § 10211. A California corporate real estate broker operates "only through and because of" the license of its designated officer/broker. *Amvest Mortgage Corp. v. Antt*, 58 Cal.App. 4th 1239, 1243, 68 Cal.Rptr.2d 457 (1997) (emphasis added). No acts for which a real estate license is required may be performed for, or in the name of, a corporation when there is no designated corporate officer/broker. Cal. Code Reg., tit. 10, § 2740; *Amvest*, *supra*, 58 Cal.App.4th at 1243 & n.4. Here, Triad held a corporate real estate broker's license and Meyer was its designated officer/broker. Meyer was the only such broker affiliated with Triad. Crank and the other Triad agents were salespersons, not brokers, and thus could work only under a broker's license. B&P Code §§ 10132, 10137.

3. Under state licensing law, corporate officer/brokers have the same duties as individual brokers. The obligations of state licensing law do not stop at the

corporate veil. One of the most important duties imposed on a broker is that he exercise supervision and control over the salespersons working under his license. That requirement applies to a broker no matter the form in which he does business. Thirty-nine states and the District of Columbia allow a corporation to hold a broker's license. See state law citations, Resp. App. 1-3. Each requires the corporation to designate a qualified individual to serve as officer/broker or in a similar position of responsibility. With the possible exceptions of Louisiana and Nevada,[5] each also imposes on the qualified individual the personal duty to supervise or be responsible for the activities of the corporation and its salespersons for which a license is required. See state law citations, Resp. App. 5-8.

Again, California law is illustrative of the common practice throughout the country. The California real estate law charged Meyer – and Meyer only – with supervisory responsibility over Crank and the other Triad salespersons, requiring that Meyer, as officer/broker

> "shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary *to secure full compliance* with the provisions of this division, *including the supervision of salespersons licensed to the corporation* in the performance of acts for which a real estate

[5] Although Nevada law is silent on supervisory responsibility, the Nevada Supreme Court has construed that law to impose personal responsibility upon the designated officer/broker for the corporation's fiduciary obligations. *Jory v. Bennight*, 91 Nev. 763, 767, 542 P.2d 1400 (1975).

license is required." B&P Code § 10159.2 (emphasis added).

For a corporate real estate broker to operate lawfully, it must "conduct[] its brokerage business *if at all* under the *active* aegis of its designated broker." *Milner v. Fox*, 102 Cal.App.3d 567, 575, 162 Cal.Rptr. 584 (1980) (emphasis added). The designated officer/broker, not the corporate entity itself, is charged with the responsibility to ensure corporate compliance with the real estate law. *Norman*, 93 Cal.App.3d at 776-77; *Milner*, 102 Cal.App.3d at 575. Otherwise, without any fixed responsibility on a licensed individual, the statutory purpose would be frustrated. *Norman, supra.*

The fact that Meyer chose to place his license in a corporate form does not change the nature of his personal responsibility to supervise Triad's salespersons. The responsibilities and qualifications of all brokers in California are the same, regardless of whether they hold their licenses as individuals, as sole proprietorships doing business under a fictitious name, as partners in a real estate partnership, or as officers of a licensed corporation. See B&P Code §§ 10130, 10137.1, 10153, 10153.2, 10159.5, 10170.5, 10171.5, 10211. All brokers must exercise reasonable supervision. B&P Code § 10177(h). The grounds for revocation of a license for individual licensees and corporate officer licensees are identical. B&P Code §§ 10176, 10177 (West 1987). Those grounds include, *inter alia*, as an individual broker licensee, failing "to exercise reasonable supervision over the activities of his [ ] salespersons," or, as an officer/broker licensee, failing "to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required." B&P Code § 10177(h).

The conclusion that the designated officer/broker is a principal responsible for directing and controlling salesperson compliance with the law is supported by the legislative history of B&P Code § 10159.2. In 1979, that provision was added to the real estate law by AB 985, imposing explicit duties of supervision and control on the designated officer/broker. Contemporaneous legislative analyses state that the amendment "attempts to insure licensed supervision of real estate corporation activity by holding designated officers *personally responsible* for that supervision," and that "the only way that the active participation of the licensed individual can be ensured is by *'piercing the corporate veil' and making the individual licensee vulnerable to action on account of corporate misdeeds, or on account of failure to fulfill corporate responsibilities.*" Staff Analysis of AB 985 for the Senate Committee on Business & Professions at 2 (7/11/79) (emphasis added) and Ass. Comm. on Labor, Employment, & Consumer Affairs, Bill Lockyer, Chairman, Statement on A.B. 985 at 2 (1979) (emphasis added), reproduced at Resp. App. 63-67.[6]

The 1979 amendments to the real estate law arose out of a concern by the legislature that brokers were avoiding their duties to supervise their salespersons under cover of the corporate veil. By 1979, California had experienced a significant increase in the number of corporate real estate firms, rising from a steady 2% of total brokers between the

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[6] Policy committee analyses such as these are commonly recognized by California courts as evidence of legislative intent. See, *e.g.*, *Hutnick v. U.S. Fidelity and Guaranty Co.*, 47 Cal.3d 456, 465 n.7, 253 Cal.Rptr. 236 (1988); *In re Marriage of Brigden*, 80 Cal.App.3d 380, 391, 145 Cal.Rptr. 716 (1978).

1920s and 1950s to 11%, or 11,500, by 1979. *Semi-Annual Bulletin of the Real Estate Department*, Vol. II, No. 2 at 494 (10/15/21); *Directory of Brokers and Salesmen*, Vol. XXXVII at 14, 23-931, 1031-1081 (1956-57); *California Department of Real Estate Reference Book* 670 (1981); Ass. Comm. Statement on AB 985 (Resp. App. 66). In fact, it was this "proliferation" of these small, closely held corporations operating without adequate broker supervision that prompted the California Department of Real Estate ("DRE") to propose the 1979 amendments placing individual responsibility for supervision on each corporation's designated officer/broker. See Legislative Proposal, Department of Real Estate, Bill Control No. 12-79-113 at 2, (2/9/79), which became AB 985. Resp. App. 68-70. Corporate brokers now make up about 14% of the total number of brokers in California. CAR Br. 6.

4. Corporate officer/brokers have the same duty as individual brokers to ensure salespersons' compliance with fair housing laws. The California Real Estate Commissioner has promulgated regulations governing broker supervision. The regulations specify that a broker "shall exercise reasonable supervision over the activities of his or her salespersons," including establishing policies "*[f]amiliarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination*" and a system for monitoring compliance with such policies. Cal. Code Reg., tit. 10, § 2725 (emphasis added). That duty of supervision applies equally to an officer/broker as it does to an individual broker. B&P Code § 10159.2. To give further context to the requirement that both individual brokers and officer/brokers "familiarize" salespersons with the requirements of fair housing laws, the regulations spell out in detail *30* separate types of discriminatory conduct in which real estate licensees are specifically prohibited from engaging. Cal. Code Reg., tit.

10, § 2780(a)-(dd). Over 30 states have prohibitions against discrimination in their licensing laws. See state law citations, Resp. App. 8-9.

Implicit in these California regulations is the recognition that by establishing and enforcing a fair housing policy, and providing adequate training, a supervising broker can go a long way toward ensuring that his agents comply with the FHA. See Timothy J. Moran, *Punitive Damages in Fair Housing Litigation: Ending Unwise Restrictions on a Necessary Remedy*, 36 Harv. C.R.-C.L. L. Rev. 279, 327 (2001). Training, or the lack of it, affects how salespersons behave, and providing FHA training to salespersons is neither burdensome nor difficult. Moran, *supra*, at 328. Yet in this case, Meyer never provided any such training to the Triad salespersons. JAL 144.

5. Common-law principles, not the existence of state civil liability, govern Meyer's FHA vicarious liability. Petitioner concedes that, as Triad's designated officer/broker, he was responsible for the supervision of Triad's salespersons, but posits that it is a duty which does not give rise to civil liability. Br. of Petitioner ("Pet. Br.") 29. But the California decision petitioner relies on, *Walters v. Marler*, 83 Cal.App.3d 1, 34-5, 147 Cal.Rptr. 655 (1978), was decided a year *before* the real estate law was amended to impose supervisory duties and responsibilities on the corporate officer/broker.[7] In fact, in a number of states,

[7] The decision in *In re Grabau*, 151 B.R. 227 (N.D. Cal. 1993), regarding liability for negligent supervision does not affect this case. The holding was clearly limited by the district court to a finding "as a matter of law that negligent supervision, without any active participation in the fraudulent transaction is not sufficient to create a fiduciary

(Continued on following page)

the officer/broker explicitly is liable for corporate breaches.[8]

In any event, respondents do not rely, nor should this Court, on the existence of state tort liability to give rise to FHA liability. Liability here arises under the FHA itself, which, according to this Court, "defines a new legal duty, and authorizes the courts to compensate a plaintiff for the injury caused by the defendant's wrongful breach." *Curtis*, 415 U.S. at 195. Even if California law would not impose state tort liability on Meyer, that law does impose supervisory obligations on him, establishing that he, not Triad, was responsible for Crank's compliance with fair housing laws.[9] That is enough for vicarious liability under the FHA.

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relationship *for the purposes of non-dischargeability*." 151 B.R. at 233 (emphasis added).

[8] See Minn. Stat. Ann. § 82.20(5) (West 1999); Tex. Rev. Civ. Stat., art. 6573a, § 1(c) (2002); *Circle T Corp. v. Deerfield*, 166 Colo. 238, 244, 444 P.2d 404 (1968); *Kimball Bridge Road at Big Creek v. Everest Realty Corp.*, 141 Ga.App. 835, 836-37, 234 S.E.2d 673 (1977); *Century 21 Action Realty II v. Smith*, 533 So.2d 626, 627 (Ala.App. 1988).

[9] That Meyer may be punished for his failure to exercise his supervisory duties through the state disciplinary process does not absolve him from FHA liability. Congress' policy of providing for fair housing throughout the United States cannot be allowed to rest on administrative enforcement by the real estate commissions of the various states. See generally 42 U.S.C. § 3615 (invalidating any state law "that purports to require or permit any action that would be a" violation of the FHA). Information available in California, for instance, shows that since 1990 the Department of Real Estate has *never* disciplined a licensee for violations of state or federal fair housing laws. See Letter from Thomas Pool, Assistant Commissioner, Legislation & Public Information, California Department of Real Estate, to Mark Stivers, Chief Consultant, Senate Housing & Community Development, California State Senate, 12 copies of which have been lodged by respondents with the Clerk of Court.

B. THE RESTATEMENT, CONSISTENT WITH THE POLICIES OF THE FHA, ESTABLISHES THAT MEYER AND CRANK HAD A PRINCIPAL-AGENT RELATIONSHIP FOR PURPOSES OF THE FHA.

Based on the nature of the Meyer-Crank relationship, dictated by the state licensing law, it is apparent the common law would view this as one of principal-agent, for it had all the indicia of such a relationship. According to *amicus* CAR, "[b]rokers, *through their real estate agents*, meet with buyers and sellers, sometimes in person, often times at the real property in question, and sometimes over the phone to establish relationships," (CAR Br. 12) (emphasis added), a statement that describes the "heart of agency" – *Qui facit per alium facit per se* – he who acts *through* another acts by or for himself. *Channel Lumber Co., Inc. v. Porter Simon*, 78 Cal.App.4th 1222, 1227, 93 Cal.Rptr.2d 482 (2000).

Meyer's statutorily mandated duty to control the activities of the Triad salespersons defines the agency relationship between them. It is this duty to control, grounded in state licensing law, that is the single most important element in creating a master-servant relationship. Seavey, *supra*, at § 84(C). Actual control is unnecessary – all that is needed is the *right* to control. *Id.* See also Restatement § 220, cmt. *d* on subsec. (1) ("there may even be an understanding that the employer shall not exercise control").

While Triad may serve as the principal for purposes of Meyer and Crank's employment with the corporation, it does not follow that the corporation is the only principal for purposes of Crank's compliance with the FHA. See

Restatement § 20, cmt. *f* (an agent may have joint principals). The state licensing law under which Triad, Meyer, and Crank operated created a separate and independent relationship between Meyer as designated broker and Crank as salesperson. At bottom, that statute-based relationship was built on the right, indeed the obligation, of Meyer to direct and control the conduct of salesperson Crank. Although Triad was the nominal employer, the professional nature of the licensed activities in which both Meyer and Crank were engaged renders their relationship, with respect to those licensed activities, one of principal-agent, not just one of supervisor-employee serving the corporate principal Triad. California licensing law makes clear that, for purposes of ensuring compliance with the FHA, Meyer is a principal and Crank is an agent, operating under Meyer's direction and control.

1. The conclusion that vicarious liability should be imposed on Meyer as an officer/broker best reflects common-law principles informed by the FHA's purposes. This result is consistent with Congressional concern expressed in the FHA's legislative history that business forms not be used to escape liability, see pp. 25-27, *infra*, and the FHA's interpretation by numerous lower courts and HUD to hold liable those persons, regardless of business form, who have the right to direct and control persons engaged in discrimination, see pp. 27-34, *infra*.

This result is also aligned with the Court's recognition that the FHA's objective "to provide, within constitutional limitations, for fair housing throughout the United States," 42 U.S.C. § 3601, is a policy "Congress considered to be of the highest priority," *Trafficante v. Metropolitan*

Life Ins. Co., 409 U.S. 205, 211 (1972), requiring that the FHA be given a "generous construction." *Id.* at 212; *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995).

2. The FHA's legislative history demonstrates Congress' express concern that business forms not be used to obtain self-exemption from the coverage of the Act. The legislative history of the 1968 FHA demonstrates that Congress was aware of, and intended to preclude, the use of business forms to avoid FHA liability. That awareness is evident in the key Senate floor debates on how broadly to write the proposed exemption of certain single-family dwellings from coverage under the Act.

Under the FHA as enacted, the sale or rental of a single-family dwelling by the owner of that dwelling (who owns fewer than three other such dwellings) is exempt from most of the substantive provisions of the Act. 42 U.S.C. § 3603(b)(1). However, the involvement of a real estate professional in any aspect of that sale or rental subjects the transaction to all the anti-discrimination requirements of the FHA. *Id.*

During the floor debates, Senator Byrd proposed an amendment that would have exempted private owners of single-family dwellings *and* real estate brokers, agents, and salespersons of such dwellings *who acted in accordance with the owner's instructions*. See 114 Cong. Rec. 4965 (1968). In opposing the Byrd amendment, Senator Mondale, the Act's principal sponsor, noted that the amendment would give individual homeowners and their real estate agents "a license to discriminate." *Id.* at 4966. Senator Mondale also observed that, even though the exemption proposed only would be available for *individuals*, it would be too easy for potential defendants to obtain

its protection simply by changing their corporate form. Thus, according to Senator Mondale: "All that would have to be done would be to make a technical change in ownership from partnerships or corporations to that of a private person. If this amendment were adopted, little, if anything, would be left" of the FHA as proposed. *Id.* at 4974. The Byrd amendment was defeated. *Id.* at 4977.

Later, in connection with a separate amendment proposed by Senator Byrd (*id.* at 5640), Senator Mondale again stated his desire that corporate forms not be used to escape responsibility for FHA violations. That proposed amendment was designed to expand the single-family-house exemption from owners of one such house to owners of three. Senator Byrd assured Senator Mondale that his expanded exemption would apply only to individual homeowners, not to corporations. *Id.* at 5643. When Senator Mondale expressed concern that the exemption should not apply to an "interest held by an individual *through* a corporate structure" because this device could be used to "*circumvent*" the law (*ibid.* (emphasis added)), Senator Byrd agreed to insert the word "individual" in front of "owner" to make clear that only natural persons could qualify for the exemption. *Id.* at 5643-44. The Byrd amendment was approved with the change. *Id.* at 5644.

The treatment of these two Byrd amendments shows Congress' concern that FHA liability not turn on changes in business forms. By the same reasoning, broker responsibility under the FHA should not depend on differences in

ownership forms that do not reflect real, substantive changes in a broker's responsibilities.[10]

3. Early judicial enforcement of the FHA imposed vicarious liability on brokers, regardless of their business form, for the discriminatory practices of salespersons acting under the license. In the first decade of enforcement of the 1968 Act, the lower courts, often at the urging of the United States, developed a large and cohesive body of precedent establishing that brokers, regardless of business form, are responsible for discrimination committed by salespersons under their direction and control. *E.g.*, *Northside Realty Assocs. v. United* States, 605 F.2d 1348, 1352-54 (5th Cir. 1979); *Marr v. Rife*, 503 F.2d 735, 740-42 (6th Cir. 1974); *United States v. Bob Lawrence Realty, Inc.*,

[10] The floor debates also show Congress' intent that the practices of real estate brokers be broadly covered by the Act. Aware that 80% of the single-family homes in the United States were sold with the use of real estate agents, see *id.* at 5219 (remarks of Senator Lausche), FHA proponents made clear that the Act's anti-discrimination commands were legitimate restraints on *real estate brokers' behavior* called for by public policy. *Id.* at 4976 (remarks of Senator Hart). For example, Senator Hart, an FHA proponent, remarked, "I have no compunction in limiting the State-licensed individual; namely, the real estate broker from being a participant in it [discrimination], willingly or not." *Id.* at 5221. When an amendment was offered to exempt the sale of single-family houses from the Act even where a real estate professional was involved, *so long as the owner does not instruct the agent to discriminate*, see *id.* at 5214, FHA proponents countered that such a proposal requiring proof of an illegal instruction between owner and real estate broker would be "impossible to produce." *Id.* at 5216 (remarks of Senator Percy). Senator Percy further advocated "plugging every loophole in this bill." *Id.* See also *id.* at 5218, 5220-21 (further remarks of Senators Mondale, Dominick, and Hart regarding the difficulties of proof and the increase in opportunity for discrimination). That proposed amendment was defeated. *Id.* at 5221-22.

474 F.2d 115 (5th Cir.), cert. denied, 414 U.S. 826 (1973). These decisions often made specific reference to a broker's "control" of his salespersons with respect to FHA compliance. *E.g.*, *Northside*, 605 F.2d at 1353-54; *Marr*, 503 F.2d at 742. Many held personally liable individuals who were the supervising brokers and/or top executives of their real estate companies. *E.g.*, *United States v. Northside Realty Assocs.*, 474 F.2d 1164, 1168 (5th Cir. 1973); *Marr*, 503 F.2d at 742; *Northside*, 605 F.2d at 1354; *Fort v. White*, 1 EOHC Rptr. (Prentice Hall) ¶ 13,703 at 14,477, 14,480-81 (D. Conn. 1975), aff'd, 530 F.2d 1113 (2d Cir. 1976); *United States v. Robbins*, 1 EOHC (Prentice Hall) ¶ 13,655 at 14,264-66 (S.D. Fla. 1974); *Sanborn v. Wagner*, 354 F. Supp. 291, 295 (D. Md. 1973); *United States v. Mitchell*, 335 F. Supp. 1004, 1005-07 (N.D. Ga. 1971), aff'd sub nom. *United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115 (5th Cir.), cert. denied, 414 U.S. 826 (1973).

Throughout the entire history of the FHA, the only reported exception to the line of decisions holding top officers and owners of brokerage companies personally liable for the FHA violations of their firms' agents appears to be a 1983 district court decision, which declined to hold the president/co-owner of a large corporate realty firm liable along with his firm. *Heights Community Congress v. Hilltop Realty, Inc.*, 629 F. Supp. 1232, 1303-05 (N.D. Ohio 1983), aff'd in part and rev'd in part on other grounds, 774 F.2d 135 (6th Cir. 1985), cert. denied, 475 U.S. 1019 (1986). The facts in *Heights*, however, do not specify whether the president was also his company's only

supervising broker, a pivotal fact giving rise to broker responsibility under state licensing law.[11]

The early decisions imposing vicarious liability on supervising brokers, including officer/brokers, occurred before, and were among those cited as the foundation for, HUD's first FHA regulation on vicarious liability. See 53 Fed. Reg. 24,184-85, 24,197 (June 27, 1988) (adopting final regulation, then codified at 24 C.F.R. § 105.13); 49 Fed. Reg. 40,528-29 (Oct. 16, 1984) (proposing this regulation and citing cases); see also Brief of the United States as *Amicus Curiae* ("U.S. Br.") 19 n.3 (citing same cases).

4. In passing the Fair Housing Amendments Act of 1988, Congress tacitly approved the interpretation of the Act in the early vicarious liability cases and HUD regulation. The early court decisions and the 1988 HUD regulation were in place before Congress passed the 1988 Fair Housing Amendments Act ("FHAA"), a set of substantial changes to the FHA whose major purposes included strengthening enforcement of the Act. See H.R. Rep. No. 100-711, 100th Cong., 2d Sess., 17, 33-40 (1988) (describing how the FHAA "strengthens the private enforcement section" as well as the administrative and Justice Department's enforcement provisions). The FHAA amounted to "tacit congressional approval" of these pre-FHAA decisions and the 1988 HUD regulation holding principals

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[11] *United States v. Lorantffy Care Ctr.*, 999 F. Supp. 1037, 1045 (N.D. Ohio 1998), cited by petitioner (Pet. Br. 16), dealt only with officers of a general corporation and had nothing to do with whether a licensed real estate broker should be held vicariously liable. Nor did *Tillman v. Wheaton-Haven Recreation Ass'n*, 517 F.2d 1141 (4th Cir. 1975).

with the "right to control" their agents liable for those agents' FHA violations. See *Edelman v. Lynchburg College*, 535 U.S. ___, 122 S. Ct. 1145, 1151-52 (2002) (Title VII case); see also *id.* at 1152 ("By amending the law without repudiating the [EEOC] regulation, Congress suggests its consent" to the agency's practice); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66 (1982) (Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change). Also in the 1988 FHAA, Congress reaffirmed its particular concern for discriminatory practices by those who possess real estate licenses by enacting § 3612(g)(5), a provision ordering HUD to take certain actions with respect to persons holding licenses at the conclusion of an administrative proceeding, if it was determined that they had violated the Act, including "recommend[ing] to [the licensing] agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent)." 42 U.S.C. § 3612(g)(5)(B).

Since passage of the 1988 FHAA and HUD's reaffirmation of its 1988 regulation (see pp. 31-33, *infra*), the lower courts have continued to apply strong vicarious liability rules in FHA cases involving brokers, often relying on a defendant broker's "right to control" his salespersons and holding personally liable individuals who

were the supervising brokers, top officers, or sole owners of their real estate companies.[12]

5. HUD's regulations support holding Meyer vicariously liable under the Act. In holding Meyer vicariously liable for Crank's discrimination, the court of appeals properly relied on a HUD regulation in effect at the time of Crank's discrimination authorizing FHA administrative complaints

> "against any person who directs or controls, or has the right to direct or control, the conduct of another person . . . if that other person, acting within the scope of his or her authority as employee or agent of the directing or controlling person [violates the Act]." *Former* 24 C.F.R. § 103.20(b) (1999).

See JA 60-61. HUD adopted this regulation on January 23, 1989 (54 Fed. Reg. 3232, 3293), after notice and comment, pursuant to explicit grants of rule-making authority in the FHA. See 42 U.S.C. § 3614a (original FHA); § 3601 notes (1988 FHAA).[13] Under *Chevron U.S.A. v. Natural Resources*, 467 U.S. at 843, such a regulation is to be followed so long as it is "a permissible construction of the statute."

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[12] See, *e.g.*, *City of Chicago v. Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d 1086, 1096-98 (7th Cir. 1992), cert. denied, 508 U.S. 972 (1993); *Sanders v. Dorris*, 873 F.2d 938, 944 (6th Cir. 1989); *Coleman v. Cranberry Baye Rental Agency*, 202 F.R.D. 106, 109-10 (N.D. N.Y. 2001).

[13] This 1989 regulation adopted the same "directs or controls, or has the right to direct or control" standard for FHA vicarious liability that HUD had set forth in an earlier regulation promulgated a few months before passage of the 1988 FHAA. See p. 29, *supra*.

Respondents agree with the United States as *amicus curiae* that this regulation is entitled to *Chevron* deference and that the 1999 revisions to that regulation were not substantive. U.S. Br. 20, 22. Respondents disagree, however, with the suggestion of the United States that the 1989 HUD regulation was merely designed to identify "*potentially* liable" FHA defendants "rather than articulating a test for determining *actual* liability." *Id.* 21 (emphasis in original). Such an interpretation conflicts with "HUD's contemporaneous explanation" (see *id.* 18), which cited as authority for the regulation decisions imposing *actual* liability on FHA defendants in both privately initiated and Justice Department cases. See 54 Fed. Reg. 3260.[14]

Finally, neither petitioner nor the United States discuss the import of HUD's regulation providing that "broker" or "agent"

> "includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions." 24 C.F.R. § 100.20 (2002), promulgated at the same time as 24 C.F.R. § 103.20. See 54 Fed. Reg. at 3283-84.

[14] Furthermore, HUD reinforced the view that its 1989 regulation meant to define a substantive FHA principle by stating in a rule-making proposal in 2000 that FHA vicarious liability "is fully consistent with the Department's position on a principal's liability for the acts of agents." 65 Fed. Reg. 67,667 (Nov. 13, 2000) (HUD's commentary on proposed sexual harassment rule).

Under this regulation, Crank would qualify as the agent and Meyer as the broker, based on their statutorily defined relationship under the state licensing law.

6. The "direct or control" standard for FHA vicarious liability has also been endorsed in decisions by HUD administrative law judges pursuant to their authority under 42 U.S.C. § 3612. In the years since the 1988 FHAA provided this authority, HUD ALJs have rendered a number of decisions holding individuals liable for the FHA violations of their company's employees.[15] This uniform set of HUD administrative decisions is entitled to substantial deference. See *United States v. Mead Corp.*, 533 U.S. 218, 228-31 (2001).

One example is *HUD v. Active Agency*, Fair Housing-Fair Lending Rptr. ¶ 25,141 at 26,157, 26,160 (HUD ALJ 1999), which held liable a corporation's owner (Peters) and its licensed real estate broker (Brady) for the discrimination of the company's agents. In rejecting these

[15] See, *e.g.*, *HUD v. Properties Unlimited*, Fair Housing-Fair Lending Rptr. ¶ 25,009 at 25,143, 25,154 (HUD ALJ 1991) (holding liable individual owner-manager, because, though his "involvement in the events which are the subject of this case was almost entirely passive . . . , he is responsible as a matter of law for his employees' unlawfully discriminatory conduct, even if he was unaware of, or did not explicitly ratify, that conduct. He clearly failed to fulfill his responsibility to ensure that his employees knew the law and obeyed it."); *HUD v. Murphy*, Fair Housing-Fair Lending Rptr. ¶ 25,002 at 25,019, 25,053 (HUD ALJ 1990) (holding liable president of corporate entities who was "responsible for [their] business operations"). The HUD ALJ fair housing decisions are reported in a loose-leaf reporter published by Aspen Law & Business entitled "Fair Housing-Fair Lending Reporter" at ¶¶ 25,001 *et seq.* and are also available on the internet at "http://www.hud.gov/alj/pdf".

individuals' claim that they should not be held responsible, the HUD ALJ wrote:

> "The relationship among the owner of Active Agency, the agency itself, its broker, and its sales agents is an agency relationship. . . . [Not to impose liability] would leave the broker and owner with little incentive to adequately manage and educate the employee agents or to ensure their work is free from discrimination. Respondent Brady was not only Active's broker, but he was the office manager. He authored the procedures manual which sets out the standard procedures and activities expected of Active's agents and other employees." *Id.* at 26,159-60 (case citations omitted).

Here, Meyer was *both* Triad's owner *and* its supervisory broker, each of which was a position held to have sufficient control for vicarious liability in the *Active Agency* case.

7. The broad construction required for the FHA supports holding Meyer vicariously liable here. Based on the relationship between Meyer and Crank as defined by real estate licensing law and on common-law principles, Meyer should be held vicariously liable for Crank's discrimination because he had a duty to control Crank's activities with respect to compliance with the FHA. That result – imposing FHA liability on a supervising officer/broker with the legal duty to control salespersons for discriminatory acts committed by those salespersons within the scope of their licensed activities – is also consistent with the primary objective of the FHA, which is to provide for fair housing throughout the United States. 42 U.S.C. § 3601.

Meyer's unwillingness to take responsibility for Crank's FHA violations undercuts the Act's primary goal of eliminating housing discrimination. To achieve that goal, the FHA requires that brokers, regardless of their business form, who have the same power to control that Meyer had over Crank, must exercise that power in favor of fair housing. As the FHA's legislative history makes clear, Congress intended the Act to apply broadly with no loopholes enabling persons and businesses to exempt themselves from coverage by changing the form in which they do business or hold property. See pp. 25-27, *supra*.

Over 85% of California real estate brokers use a non-corporate business form in which they are clearly liable for their salespersons' FHA violations under basic agency principles. See p. 15, *supra*; CAR Br. 7. For the other 14%, California, like other states, requires the corporate licensee to designate an individual broker who is responsible for the conduct of the firm's salespersons. See pp. 16-18, *supra*. To hold that Meyer, as Crank's supervising broker, is responsible for Crank's discrimination would thus do no more than equate Meyer's responsibilities with those of the vast majority of his fellow brokers, hardly a result that would require "restructuring of the real estate industry" (CAR Br. 13) or be a "catastrophic" event "open[ing] the floodgates of litigation throughout the country." Pet. Br. 32.

If by simply changing form from an individually licensed broker to an officer/broker, a licensed real estate broker can shield himself from FHA liability for discrimination committed by salespersons operating under his supervision, Congress' purpose will be frustrated. While only 14% of the brokers in California currently do business in the corporate form, a rule that allows the corporate veil

to trump FHA liability would give every broker a reason to incorporate and would insulate a major sector of the housing industry that Congress voiced its intent to reach with the Act.

II. UNDER COMMON-LAW PRINCIPLES, MEYER IS LIABLE AS THE LICENSEE UNDER WHOSE LICENSE CRANK ACTED.

Apart from whether Meyer and Crank are considered to have a principal-agent relationship or whether Meyer may be vicariously liable for Crank's discrimination, a distinct and well-established source of liability is recognized in the Restatement when the underlying activity could only occur with a license issued by the government. In such cases, if the person who obtained the license in turn permits another to engage in that activity, the licensee is liable for the other's torts committed under that license. Under these circumstances, common-law principles hold liable the individual broker who obtained the license in question:

> "When a license is required for the performance of acts, one having a license who delegates performance of the acts to another is subject to liability for the negligence of the other." Restatement § 214, cmt. *b*.

Accord Seavey, *supra*, § 82, at 137, 139: "A person whether or not a principal, . . . who operates under a license is responsible for the negligent acts of those to whom he delegates performance and who can lawfully act only because of the license." This rule has long been recognized by this Court. See, *e.g.*, *Chicago, Burlington and Quincy RR. v. Willard*, 220 U.S. 413, 421-24 (1911); *Railroad*

Company v. Barron, 5 Wall. (72 U.S.) 90, 104 & nn.14, 15 (1866).

As the designated officer/broker, Meyer is the "licensee" for purposes of applying the common-law principles embodied in Restatement § 214, since in California, as elsewhere, a license is issued in reliance on the individual broker's knowledge, experience, and qualifications, not on those of the corporation. This conclusion is based on the licensing law itself.

California law establishes a number of requirements that must be met before *any* "applicant" can obtain a broker's license. They include: (1) having two years of experience as a real estate salesperson, who by definition must be a "natural" person; (2) being at least 18 years of age; (3) completing a specified set of college-level courses related to real estate; and (4) passing a written examination. B&P Code §§ 10132, 10150, 10150.6, 10153.2, 10153.3; Cal. Code Reg., tit. 10, § 2720. Once a broker's license has been issued, it can only be renewed if the individual making the application has successfully completed certain continuing education courses, evidence of which must be submitted with the renewal application. B&P Code §§ 10170.5, 10171.5.[16] A corporation cannot do any of these things.

The fact that Triad was permitted to practice real estate under Meyer's designated broker's license did not

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[16] In fact, in 1986, Meyer's corporate officer renewal application was denied because the state was unable to determine that he had completed required continuing educati[illegible]AL 105. His license was issued after he submitted the necessary [illegible]AL 100-102.

alter Meyer's responsibilities as the licensee under the Restatement. It was Meyer's qualifications, not Triad's, on which the state continually relied in permitting Triad to sell real estate. Once Meyer himself met those requirements, the decision whether Triad would, as a consequence, be permitted to engage in real estate activities was entirely up to Meyer. Indeed, when Meyer in 1972 initially qualified to be a broker, he elected to have that license issued to him as an individual (JAL 3, 15), and only later asked that it be issued in a form that allowed Triad to do business. JAL 14. Meyer was free at any time to ask that the broker's license for which he was qualified instead be issued to him as an individual, rather than to him as an officer of Triad, a change that would have immediately stripped Triad of its authority to engage in real estate brokerage.[17] If Meyer and Triad had parted ways, only Meyer would still have been qualified to be a broker. Cal. Code Reg., tit. 10, § 2740. Simply put, Triad as a corporation may have perpetual existence as a business entity, but it does not have perpetual existence as a real estate broker unless affiliated with a qualified officer/broker.

Thus, even though Crank may have been an employee of Triad, it was *Meyer's* qualifications as a broker, and his

[17] The record shows that it was Meyer as a designated broker, not Triad as a corporation, that the California DRE licensed and held responsible as the broker: Authorization for Triad required "signature of licensed broker-officer" (JAL 14); renewal forms entitled "officer renewal application," required signature of designated broker as "applicant" (JAL 6-7, 36-37, 44-45, 48-49, 100-101, 108-09, 112-13); officer renewal forms referred to officer as licensee and subject to real estate law (JAL 6-7, 48-49); license itself issued to Meyer as "officer," not Triad as corporation, bearing the limitation: "valid only as officer of Triad, Inc." JAL 8, JA 37 at ¶ 4; JA 40 at ¶ 4.

personal assent, that put Crank in the position where he could injure respondents. Under Restatement § 214, cmt. b, that is enough to hold Meyer liable for Crank's unlawful conduct under Meyer's license.

A factually related common-law principle also applicable in this case imposes liability on a principal for the acts of an agent, whether or not a servant, "if the agent's position enabled him to commit the tort." Seavey, *supra*, at § 91, p. 161. Under Restatement § 261:

> "A principal who puts a servant or other agent in a position which enables the agent, while apparently acting within his authority, to commit a fraud upon third persons is subject to liability to such third persons for the fraud."

By agreeing to allow Crank to operate under the broker's license, Meyer enabled him to commit his acts of fraud and misrepresentation – his FHA violations – against the Holleys. For this, too, Meyer is subject to FHA liability.

III. UNDER COMMON-LAW PRINCIPLES, MEYER IS LIABLE FOR HIS NEGLIGENT SUPERVISION AND FAILURE TO CONTROL THE ACTIVITIES OF CRANK.

Petitioner argues that under common-law principles he cannot be liable for Crank's discrimination in his position as president of Triad because he did not participate in the discrimination. Pet. Br. 14-15. That argument ignores another well-established common-law principle – that a corporate officer is personally liable "where the corporation owed a duty of care to [an injured] person, the duty had been delegated to the officer, and the officer breached this duty through personal fault causing injury."

3A *Fletcher Cyclopedia of the Law of Private Corporations*, § 1137, at 303 (perm. ed. 1994). Here, a special duty of care was imposed on Meyer as Triad's only designated officer/broker to supervise and control the corporation's licensed activities, a duty he breached through his own negligence.

Triad, and Meyer as its designated officer/broker, owed fiduciary duties to all parties in a contemplated real estate transaction. *Wyatt v. Union Mortgage Co.*, 24 Cal.3d 773, 783, 598 P.2d 45 (1979); *Nguyen v. Scott*, 206 Cal.App.3d 725, 735-36, 253 Cal.Rptr. 800 (1989). See generally Rohan, *supra*, ch. 3 (discussing broker's duties in the various states). While those duties may nominally have been imposed on Triad, it fell to Meyer, as the designated officer/broker, to ensure the corporation's compliance with those duties. B&P Code § 10159.2.

Meyer may not interpose Triad's corporate veil to shirk those duties. When a corporation as an entity is placed in a fiduciary capacity, "it is the corporate officer who is charged with living up to the terms of the agency." *In re Hildebrand*, 230 B.R. 72, 77 (Bankr. D. Md. 1999); cf. *Middlesex Insur. Co. v. Mann*, 124 Cal.App.3d 558, 561-62, 571-74, 177 Cal.Rptr. 495 (1981) (where defendant was the individual "through whom" insurance company was licensed to do business, he was liable for breach of fiduciary duty owed by company). Otherwise, a corporate officer always could place the corporation between himself and the person to whom the duty was owed in order to escape liability. *Hildebrand, supra*.

Meyer repeatedly breached his duties as the designated broker and as the individual charged with living up to the statutory duties imposed on Triad. Over the course

of the 1995-1998 period, Meyer admitted: (1) that he did not personally supervise Triad's salespersons (JAL 134-37); (2) that he "fulfilled [his] duties" as designated officer/broker and president of Triad "through [Crank]" (JAL 136); (3) that Crank "undertook day-to-day operations" of Triad, which Meyer "continued to monitor . . . through him" by meeting with him "from time to time" (JAL 135); (4) that Meyer's supervision consisted of sitting down with Crank, on an estimated monthly basis, with no formal agenda and asking "How are things going?" (JAL 138); (5) that he did not review any Triad paperwork on finalized real estate transactions because he had delegated that work to Crank, even though he provided no training to Crank for handling this responsibility (JAL 143); (6) that he did not routinely review any documents to monitor the course or quality of Crank's work (JAL 143-144); (7) that he "would come to the office on some occasion, sometimes weekly, sometimes monthly, sometimes a couple of times a month" and discuss with his "former colleagues" how they were doing (JAL 139); (8) that he had attended "a couple" of the periodic meetings of Triad salespersons (JAL 143); (9) that he had never worked with or reviewed any of the work of Stump, another Triad agent involved in this case (JAL 159); (10) that he did not know without having to ask Crank on the day before his deposition whether the Triad agents had been given the company's policies and procedures manual (JAL 158); and (11) that he never provided any training regarding the fair housing laws to Triad salespersons nor does he recall any fair housing training occurring at Triad. JAL 144.[18]

[18] Meyer also claimed that he had never heard Crank, an agent he had supervised for over 15 years, use the phrase "salt and pepper team"

(Continued on following page)

Triad's corporate veil does not shield Meyer from liability because of the unique fiduciary responsibilities imposed on him alone as the designated officer/broker of the corporation. The common law recognizes that certain duties and obligations are personal:

> "Duties or privileges created by statute may be imposed or conferred upon a person to be performed or exercised personally only. Whether a statute is to be so interpreted depends upon whether or not in view of the purposes of the statute, the knowledge, consent, or judgment of the particular individual is required." Restatement § 17, cmt. *b*.

Modern courts have found nondelegable duties arising from licensing statutes, rules and regulations.[19] Indeed, at least 15 states have specific prohibitions against "license lending" or allowing a salesperson to operate a brokerge

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to describe interracial couples. JAL 60-74, 160. Meyer was unaware that Crank had admitted that it was a term he used. JA 46-47, Meyer Depo. 32.

[19] *E.g.*, *Chapman v. Mutual Service Casualty Insurance Co.*, 35 F. Supp. 2d 699, 706-07 (E.D. Wis. 1999) (broker's duties toward seller and buyers imposed by state real estate law are nondelegable as a matter of public policy). See also, *e.g.*, *Pavelic & LeFlore v. Marvel Entertainment Group*, 493 U.S. 120, 125 (1989) (former Fed.R.Civ.P. 11 established nondelegable duty on individual attorney signing pleading); *MBH Commodity Advisors, Inc. v. Commodity Futures Trading Commission*, 250 F.3d 1052, 1066-67 (7th Cir. 2001) (licensed commodity futures trader has nondelegable duty to comply with rules of futures association); *Cosmopolitan Broadcasting Corp. v. Federal Communications Commission*, 581 F.2d 917, 921-22 (D.C. Cir. 1978) (radio station licensees have a nondelegable duty to independently choose all programming); *Rob-Mac, Inc. v. Department of Motor Vehicles*, 148 Cal.App.3d 793, 798-99, 196 Cal. Rptr. 398 (1983) (statutory duties imposed on licensed vehicle dealer are nondelegable).

office without a broker's presence. See state law citations, Resp. App. 10. This type of nondelegable duty is not an obligation grounded in the FHA. In fact, this case does not even raise the issue whether the FHA itself imposes a nondelegable duty not to discriminate.[20] Instead, the nondelegable nature of Meyer's duties arises out of the law of California. See, *e.g.*, B & P Code § 10159.2; Cal. Code Reg., tit. 10, § 2725.

For more than a century, corporate officers have been held personally liable for negligently violating their statutory duties. If "statutory duties to manage [c]ould be sufficiently performed by *absence*," the untenable situation would develop where "the denser the ignorance" the more certain would be exoneration from liability. *Cameron v. Kenyon-Connell Commercial Co.*, 22 Mont. 312, 56 P. 358, 360 (Mont. 1899) (emphasis added), noted in 3A *Fletcher Cyclopedia of Corporations*, *supra*, § 1137, at 303. Here, Meyer was charged with certain personal duties as a

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[20] The nondelegable duty doctrine is one way of making a principal liable for the torts of his agents who were acting outside the scope of their employment and for the torts of independent contractors. See Restatement § 219(2)(c)(quoted in *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 758 (1998)); *General Building*, 458 U.S. at 395-96 and n.20 (relying on and quoting Restatement § 214). Since Crank violated the FHA while acting within the scope, as petitioner concedes (Pet. Br. 2, 4 (describing Crank as acting as Triad's agent when he dealt with the respondents)), the court of appeals' decision holding his master vicariously liable need not have mentioned whether brokers have a nondelegable duty to obey the FHA. See, *e.g.*, *Cabrera v. Jakabovitz*, 24 F.3d 372, 388 n.16 (2nd Cir.), cert. denied, 513 U.S. 876 (1994) (where principal-landlords are liable for their agent's discrimination "under traditional doctrines of *respondeat superior*, we do not need to consider whether they might also be liable because landlords may have a nondelegable duty not to discriminate").

corporate officer, arising out of the state licensing law and Triad's fiduciary obligations, and his failure to discharge those duties through "absence" or otherwise was a wrongful act in itself. Cf. Restatement (Second) of Torts, § 284 (1965) ("[n]egligent conduct may be . . . a failure to do an act which is necessary for the protection or assistance of another and which the actor is under a duty to do"); *id.* § 874 ("[o]ne standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation").

In sum, as Meyer admitted, he had "not been involved in the day-to-day management of the business since February 1995" (JAL 151), despite his recognition that he was, as Triad's president and designated officer/broker, "ultimately responsibl[e] for the activities of that organization." JAL 145. If Meyer is allowed to fulfill his statutory duties as a licensed officer/broker through absence, then the objectives of the FHA to stop housing discrimination will be frustrated.[21]

[21] Even if Meyer was acting only as Crank's "fellow agent," rather than his principal, common-law principles regarding the liability of agents for the torts of their fellow agents support liability. Where an agent has no power to bind the principal by the appointment of a subagent, then the agent is responsible to third persons for the subagent's conduct. Restatement § 5, cmt. *b*. Because Meyer had no power to completely delegate all his duties to Crank, see pp. 42-43, *supra*, he is liable to third persons for the conduct of Crank in the same way "as that of a master or other principal for the conduct of his servants and other agents." Restatement § 362. Meyer's wrongful delegation of his duties to Crank also renders him liable under common-law principles – and therefore the FHA – for Crank's conduct, because Meyer was "at fault in appointing" Crank. Restatement § 358.

IV. COMMON-LAW "VEIL PIERCING" PRINCIPLES AND THE "ALTER EGO" DOCTRINE, ADAPTED TO THE FHA'S POLICIES, RENDER MEYER PERSONALLY RESPONSIBLE FOR TRIAD'S LIABILITY.

Meyer's treatment of Triad was so informal and the underfunding of the corporation so severe that he should be held liable for Triad's FHA obligations based simply on traditional concepts of "piercing the corporate veil" and the "alter ego" doctrine. In *United States v. Bestfoods*, 524 U.S. 51, 62 (1998), this Court held that a "fundamental" common-law principle is that "the corporate veil may be pierced and the shareholder held liable for the corporation's conduct" in certain situations.

Meyer was Triad's founder and sole stockholder, its president, and its designated broker. In this combination of roles, Meyer established all of Triad's policies. JA 46-47, Meyer Depo. 38-39. He must also be considered responsible for Triad's finances, which were so thin that Triad cannot pay any judgment in this case, and for its insurance, which specifically excluded discrimination claims.[22]

[22] This was a calculated gamble by Meyer. An officer/broker can ensure that his corporation has adequate levels of errors and omissions insurance ("E&O"). See, *e.g.*, Jacobus, *supra*, at 450 ("[t]oday E&O is simply a cost of the real estate business just like rent, telephone, and automobile expenses"). Triad did have an E&O policy, but it explicitly excluded racial discrimination claims. See JA 27, 50; Record 43 at 40-41; Resp. C.A. Ex. R. 220-28; district court opinion in case 98-8617, lodged with the Clerk of Court by respondents. It is clear that insurance covering vicarious liability for civil rights violations is available. See, *e.g.*, *Melugin v. Zurich Canada*, 50 Cal.App.4th 658, 666-67, 57 Cal.Rptr.2d 781 (1996); *Dart Industries, Inc. v. Liberty Mut. Ins. Co.*, 484 F.2d 1295, 1297-98 (9th Cir. 1973).

Record at JA 27, 50; Record 43 at 40-41. As Triad's designated broker, he was legally responsible for supervising Triad's salespersons and had control over Triad's ability to be a real estate brokerage firm. See pp. 37-38, *supra*. Despite these responsibilities, Meyer failed to observe basic corporate formalities. Examples of such conduct include: (1) no apparent shareholder or board meetings between March 4, 1996, and August 5, 1998, in violation of Cal. Corp. Code §§ 301, 600(b) (West 1990); and (2) no documentation of the purported "transfer" of the entire company to Crank one day in 1995, nor of any notice to or approval by Triad's board or shareholders of such a transfer, in violation of Cal. Corp. Code § 1001(a). JAL 55, 124.

Meyer's failures support veil piercing here. See *Anderson v. Abbott*, 321 U.S. 349, 362 (1944) (inadequacy of capital "has frequently been an important factor in cases denying stockholders their defense of limited liability"); 1 *Fletcher Cyclopedia*, § 41.10, at 586 (rev. ed. 1999) ("inadequate capitalization" and "whether the formal legal requirements of the corporation are observed" are among the "common factors" that courts "consider when determining whether to pierce the corporate veil"); *id.* § 41.30, at 625-28 (same).

In determining whether to pierce the veil, the Court should "look closely at the purpose of" the FHA. 1 *Fletcher Cyclopedia*, *supra*, § 41.90, at 698; see also Note, *Piercing the Corporate Law Veil: The Alter Ego Doctrine Under Federal Common Law*, 95 Harv. L. Rev. 853, 859-64, 871 (1982) (willingness to pierce the veil should turn on the policies of the particular federal statute involved). "Under federal common law, the corporate form may be disregarded in the interests of justice where it is used to defeat an overriding public policy." 1 *Fletcher Cyclopedia*, *supra*,

§ 41.90, at 698-99. The "interposition of [Triad's corporate veil should] not be allowed to defeat [the] legislative policy" of the FHA against housing discrimination and the long-standing judicial determination that brokers are responsible for their agents' FHA violations. See *Anderson*, 321 U.S. at 363.

CONCLUSION

The judgment of the court of appeals should be affirmed and Meyer held liable for Crank's FHA violations in his role as Triad's licensed officer/broker. With respect to Meyer's negligent supervision and the propriety of piercing the corporate veil, this Court should affirm the judgment of the court of appeals and remand for trial on those issues.

Respectfully submitted,

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RESPONDENT'S APPENDIX

Collection of Citations of State Real Estate Licensing Laws

39 states and the District of Columbia permit issuance of a broker's license to a corporation:

Ala. Code § 34-27-32 (1997)

Ariz. Rev. Stat. Ann. § 32-2125(A) (West 2002)

Cal. Bus. & Prof. Code § 10158 (West 1987)

Colo. Rev. Stat. § 12-61-103(7) (2001)

Conn. Gen. Stat. Ann. § 20-312(b) (West 1999)

D.C. Code § 47-2853.183 (West 2001)

Ga. Code Ann. § 84-1414(a) (Harrison Supp. 1999); Ga. Code Ann. § 43-40-10(a) (2002)

Haw. Rev. Stat. § 467-8(5) (Cum. Supp. 2000)

Idaho Code § 54-2016(1)(a) (Michie Supp. 2001)

Ill. Comp. Stat. Ann. 454/5-15(b) (West Supp. 2002)

Ind. Code Ann. § 25-34.1-3-4.1(c) (West 2001)

Iowa Code Ann. § 543B.2 (1997)

La. Rev. Stat. Ann. § 37:1437.2(A) (2000)

Me. Rev. Stat. Ann. tit. 32, § 13173(1) (West 1999)

Md. Code Ann., Bus. Occ. & Prof. § 17-321(a) (2000)

Mass. Gen. Laws Ann. ch. 112, § 87UU (West 1996)

Mich. Comp. Laws § 339.2505(1) (2001)

Minn. Stat. Ann. § 82.20(4) (West 1999)

Miss. Code Ann. § 73-35-6 (2000)

Mo. Ann. Stat. § 339.030 (West 2001)

Nev. Rev. Stat. Ann. § 645.380 (Michie 2000)

N.H. Rev. Stat. Ann. § 331-A:12(IV) (1995)

N.J. Stat. Ann. § 45:15-9 (West 1993)

N.M. Stat. Ann. § 61-29-9(D) (Michie 1999)

N.Y. Real Prop. Law § 440 (1998)

N.C. Gen. Stat. § 93A-2(a) & -4(a) (2002); N.C. Admin. Code tit. 22, r. 58A.0502 (2002)

N.D. Cent. Code § 43-23-05 (1993)

Ohio Rev. Code Ann. § 4735.02 (Anderson 2002 Supp. Pamph.); Ohio Admin. Code § 1301:5-1-03 (2002)

Okla. Stat. tit. 59, § 858-305 (2000); Okla. Real Estate Comm. Rules, r. 605:10-1-2(a) (2002)

Pa. Stat. Ann., tit. 63, § 455.513 (1996)

R.I. Gen. Laws sec. 5-20.5-8 (1999)

S.D. Codified Laws § 36-21A-38 (Michie 2000)

Tenn. Code Ann. § 62-13-102(3)(A) & (12) (2002)

Tex. Rev. Civ. Stat. § 6573a, subsection 6(c) (2002)

Utah Code Ann. § 61-2-9(4) (2000)

Vt. Stat. Ann. Tit. 26, § 2211(2) & (4) & § 2291 (1998)

Va. Code Ann. § 54.1-2100 (Michie 2002)

Wash. Rev. Code § 18.85.170(1) (1999)

W. Va. Code § 30-40-12(b) (2002); W. Va. Code St. R. § 174-1-4.2 (2000)

Wis. Stat. § 452.12(2) (2001 Cum. Supp.)

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29 states and the District of Columbia require the designated officer to be individually licensed:

Ariz. Rev. Stat. Ann. § 32-2125(A) (West 2002)

Conn. Gen. Stat. Ann. § 20-312(b) (West 1999)

D.C. Code § 47-2853.183 (West 2001)

Ga. Code Ann. § 84-1414(a) (Harrison Supp. 1999); Ga. Code Ann. § 43-40-10(a) (2002)

Haw. Rev. Stat. § 467-8(5) (Cum. Supp. 2000)

Idaho Code § 54-2016(1)(b) (Michie Supp. 2001)

Ill. Comp. Stat. Ann. 454/5-15(b) (West Supp. 2002)

Ind. Code Ann. §§ 25-34.1-3-4.1(c) & 24-34.1-4-2 (West 2001)

Iowa Code Ann. § 543B.2 (1997)

La. Rev. Stat. Ann. § 37:1437.2(B) (2000)

Me. Rev. Stat. Ann. tit. 32, § 13173(1) (West 1999)

Md. Code Ann., Bus. Occ. & Prof. § 17-321(b) (2000)

Mass. Gen. Laws Ann. ch. 112, § 87UU (West 1996)

Mich. Comp. Laws § 339.2508(1) & (2) (2001)

Minn. Stat. Ann. § 82.20(4) (West 1999)

Miss. Code Ann. § 73-35-6 (2000)

Mo. Ann. Stat. § 339.030 (West 2001)

N.H. Rev. Stat. Ann. § 331-A:16(III) (Supp. 2001)

N.J. Stat. Ann. § 45:15-9 (West 1993)

N.M. Stat. Ann. § 61-29-9(D) (Michie 1999)

N.Y. Real Prop. Law § 441-b(2) (1993)

N.C. Gen. Stat. § 93A-2(a)(1) (2002); N.C. Admin. Code tit. 22, r. 58A.0503(g) (2002)

N.D. Cent. Code § 43-23-05 (1993)

Ohio Rev. Code Ann. § 4735.02 (Anderson 2002 Supp. Pamph.)

Okla. Stat. tit. 59, § 858-305 (2000); Okla. Real Estate Comm. Rules, r. 605:10-7-8 (2002)

Pa. Stat. Ann., tit. 63, § 455.513 (1996); 49 Pa. Code § 35.222(c) (2002)

Tex. Rev. Civ. Stat. § 6573a, subsection 6(c) (2002)

Va. Code Ann. § 54.1-2106.1(A) (Michie 2002)

W. Va. Code § 30-40-12(c) (2002)

Wis. Stat. §§ 452.01(3j) & (3k), 452.12(2) (2001 Cum. Supp.)

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9 states allow the designated officer to do business under the corporation's license:

Ala. Code § 34-27-2(a)(12) & -32(e) (1997)

Cal. Bus. & Prof. Code § 10211 (West 1987)

Colo. Rev. Stat. § 12-61-103(7) (2001)

Nev. Rev. Stat. Ann. § 645.380 (Michie 2000)

R.I. Gen. Laws sec. 5-20.5-8 (1999)

S.D. Codified Laws § 36-21A-38 (Michie 2000)

Utah Code Ann. § 61-2-9(4) (2000)

Vt. Stat. Ann. Tit. 26, § 2291 (1998)

Wash. Rev. Code § 18.85.170(1) (1999)

Every state allowing a corporation to hold a broker's license requires that the corporation designate a licensed broker or otherwise qualified broker as broker, and virtually every one of those states explicitly imposes duties of responsibility and/or supervision on that broker for the acts of the corporation and/or its salespersons for which a license is required:

Ala. Code §§ 34-27-2(a)(12), -32(e) & -34(a)(1) & (2) (1997)

Ariz. Rev. Stat. Ann. § 32-2125(A) & 32-2153(A)(21) (West 2002); Ariz. Admin. Code R4-28-302(H) (2002)

Cal. Bus. & Prof. Code § 10159.2 & 10211 (West 1987)

Colo. Rev. Stat. §§ 12-61-103(7) & 12-61-103(8) (2001)

Conn. Gen. Stat. Ann. § 20-312(b) (West 1999)

D.C. Code § 47-2853.161 (West 2001)

Ga. Code Ann. § 84-1414(a) (Harrison Supp. 1999); Ga. Code Ann. § 43-40-10(a), -18(b) & (c) (2002)

Haw. Rev. Stat. § 467-8(5) (Cum. Supp. 2000); 16 Haw. Admin. Rules, ch. 99, § 16-99-3(m) (2002)

Idaho Code § 54-2038 (Michie 2000)

Ill. Admin. Code tit. 68, §§ 1450.10 & 1450.130 (2002)

Ind. Code Ann. §§ 25-34.1-3-4.1(c) & 25-34.1-4-2 (West 2001); Ind. Admin. Code tit. 876, r. 1-1-3(i), -11, -18 (2002)

Iowa Code Ann. § 543B.62(3)(b) (1997); Iowa Admin. Code R. 193E-2.1, -18.2(8), -18.14(5)(m) (2002)

La. Rev. Stat. Ann. § 37:1437.2(B) (2000)

Me. Rev. Stat. Ann. tit. 32, §§ 13067(I) & 13179 (West 1999)

Md. Code Ann., Bus. Occ. & Prof. § 17-321(b) (2000); Md. Regs. Code 09.11.05.02 (2002)

Mass. Regs. Code tit. 254, § 2.00(11) (2002)

Mich. Admin. Code r. 339.22310 & 339.22325 (2002)

Minn. Stat. Ann. § 82.20(5) (West 1999)

Miss. Code Ann. §§ 73-35-6 & -15(2) (2000); Miss. Real Estate Comm. Rule IV (A)(1) & (2) (2002)

Mo. Code Regs. Ann. tit. 4, § 250-8.020(1) (2002)

Nev. Admin. Code ch. 645, § 600 (2002)

N.H. Rev. Stat. Ann. § 331-A:12(IV), :16(l) & (ll) (Supp. 2001)

N.J. Stat. Ann. § 45:15-9 (2002); N.J. Admin. Code, tit. 11, § 5-4.2 (2002)

N.M. Stat. Ann. § 61-29-9(D) (Michie 1999); N.M. Admin. Code tit. 16, § 61.16.1.7 (JJ) & 61.16.9 (2002)

N.Y. Real Prop. Law § 441-b(2) (1998); N.Y. Comp. Codes R. & Regs. tit. 19, § 175.21(a) (2002)

N.C. Admin. Code tit. 21, r. 58A.0503(g), .0506(c) (2002)

N.D. Admin. Code §70-02-01-04, -09, -14 (2002)

Ohio Rev. Code Ann. § 4735.51(K) (Anderson 1998)

Okla. Stat. tit. 59, § 858-312(8) (2002 Cum. Supp.); Okla. Real Estate Comm. Rules, r. 605:10-7-8, :10-7-8(b) & :10-17-4 (2002)

Pa. Stat. Ann., tit. 63, § 455.513 (1996); 49 Pa. Code § 35.201 & .222(c) (2002)

R.I. Gen. Laws sec. 5-20.5-8 (1999); R.I. Dept. of Bus. Reg. Commercial Licensing Reg. 11, r. 2 & 15(E) (2002)

S.D. Codified Laws § 36-21A-38, -79 (Michie 2002); S.D. Admin. R. 20:69:03:16 (2002)

Tenn. Code Ann. § 62-13-312(15) (2002); Tenn. Comp. R. & Regs. 1260-2.01 (2002)

Tx. Rev. Civil. Stat. § 6573a, subsection 1(c) (2002)

Utah Code Ann. § 61-2-11(14) (2000); Utah Admin. Rules, R162-6.2.9 (2002)

Vt. Code R. 04 030 290 §§ 1.8(4) & (16), 2.6, 4.2 (2002)

Va. Code Ann. § 54.1-2106.1(A), -2142(D) (Michie 2002); 18 Va. Admin. Code § 135-20-10 (2002)

Wash. Rev. Code § 18.85.155 18.85.230(25) (1999); Wash. Admin. Code § 308-124-021(1) & -124D-061(2) (2000)

W. Va. Code §§ 30-40-4(f), -12(b) & (c), -17(b)(1), -19(a)(30) (2002)

Wis. Stat. § 452.12(3)(a) (date); Wis. Admin. Code § RL 17.09(1) (2002)

The majority of states and the District of Columbia specifically prohibit licensees from engaging in, or authorize discipline for, acts of housing discrimination:

Alaska Admin. Code tit. 12, § 64.130(19) (2002)

Ariz. Rev. Stat. Ann. § 32-2153(A)(19) (West 2002)

Cal. Code Regs., tit. 10, § 2780 (2002)

Colo. Rev. Stat. §§ 12-61-113(1)(m.5) (2001)

Conn. Agencies Regs. § 20-328-4a (2002)

Del. Real Estate Comm. Rule 10.3.1.1 & 10.3.1.2 (2002)

D.C. Code § 47-2853.191(a)(5) & .192(a)(5) (West 2001)

Ga. Code Ann. § 84-1421(a)(1) (Harrison Supp. 1999; Ga. Code Ann. § 43-40-25(a)(1) (2002)

Ill. Comp. Stat. Ann. 454/20-20(h)(21) & 20-50 (West Supp. 2002); Ill. Admin. Code tit. 68, § 1450.135 (2002)

Ind. Admin. Code tit. 876, r. 1-1-40(17) (2002)

Kan. Stat. Ann. § 58-3050(a)(3) (1994)

Ky. Rev. Stat. Ann. § 324.160(4)(v) & (5) (Michie 2001)

La. Rev. Stat. Ann. § 37:1455(A)(1) & :1437(D) (West 2000)

Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(16) (Supp. 2001)

Mass. Gen. Laws Ann. ch. 112, § 87AAA(k) (West 1996); Mass. Regs. Code tit. 254, § 3.00(14)(c) (2002)

Mo. Code Regs. Ann. tit. 4, § 250-8.070(5) (2002)

Neb. Rev. Stat. § 81-885.24(1) & (30) (Supp. 2002)

N.H. Rev. Stat. Ann. § 331-A:26(XVII) (Supp. 2001)

N.C. Gen. Stat. § 93A-6(a)(10) (2002); N.C. Admin. Code tit. 21, r. 58A.1601 (2002)

N.D. Cent. Code § 43-23-11.1 (1991)

Ohio Rev. Code Ann. § 4735.18 (A)(7) & .62(E) (Anderson 1998 & 2002 Cum. Supp.)

Okla. Stat. tit. 59, § 858-312(17) (2002 Cum. Supp.)

R.I. Gen. Laws sec. 5-20.5-14 (32) (1999); R.I. Dept. of Bus. Reg. Commercial Licensing Reg. 11, r. 21 (2002)

S.C. Code Ann. § 40-57-137(B)(6), (C)(5) & (H)(5) (Law Co-op 2001)

S.D. Codified Laws § 36-21A-71(10) (Michie 2000)

Tenn. Code Ann. § 62-13-312(13) (2002)

Tex. Rev. Civ. Stat. § 6573a, subsection 15(a)(6)(AA) (2002)

Vt. Stat. Ann. Tit. 26, § 2296(a) & Tit. 3, § 129a(a)(6) (2001 Cum. Supp.)

18 Va. Admin. Code § 135-20-260(7) (2002)

Wash. Rev. Code § 18.85.230(18) (2002 Cum. Supp.); Wash. Admin. Code § 308-124D-070 (2002)

W. Va. Code § 30-40-19(a)(27) (2002)

Wis. Stat. § 452.14(3)(jm) & (n) (1998); Wis. Admin. Code § RL 24.03(1) (2002)

A number of states explicitly prohibit "license lending" or similar conduct:

Alaska Admin. Code tit. 12, § 64.130(17) (2002)

Ariz. Admin. Code R4-28-302(J) (2002)

Haw. Rev. Stat. § 467-14(10) (Cum. Supp. 2000)

Ill. Admin. Code tit. 68, § 1450.220(j) (2002)

Kan. Stat. Ann. § 58-3062(e)(4) (1994)

La. Rev. Stat. Ann. § 37:1455(A)(19) (2000)

Mich. Admin. Code r. 339.22325 (2002)

Mo. Code Regs. Ann. tit. 4, § 250-8.020(2)(b) (2002)

Ohio Admin. Code § 1301:5-1-14(A) & (B) (2002)

Okla. Real Estate Comm. Rules, r. 605:10-17-4(6) (2002)

Or. Admin. R. 863-015-0140(2) (2002)

R.I. Dept. of Bus. Reg. Comm. Licensing Reg. 11, r. 12 (2002)

S.D. Codified Laws § 36-21A-71(25) (Michie 2000)

Wash. Admin. Code § 308-124D-061(1) (2002)

Wyo. Real Estate Comm. R. & Regs. § 13(a)(x) (2002)

Title 42, United States Code:

§ 3601. Declaration of policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

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§ 3603. Effective dates of certain prohibitions

. . .

(b) Exemptions

Nothing in section 3604 of this title (other than subsection (c)) shall apply to –

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period:

Provided further, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the

application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 3604(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

. . . .

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§ 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful –

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

. . . .

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§ 3605. Discrimination in residential real estate-related transactions

(a) In general

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) "Residential real estate-related transaction" defined

As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance –

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) Appraisal exemption

Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

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§ 3608. Administration

(a) Authority and responsibility

The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

. . . .

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§ 3610. Administrative enforcement; preliminary matters

(a) Complaints and answers

(1)(A)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice

has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

(iii) The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such a complaint –

(i) the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this subchapter;

(ii) the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this subchapter, together with a copy of the original complaint;

(iii) each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

(iv) the Secretary shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint,

within 100 days after the commencement of such further action), unless it is impracticable to do so.

. . . .

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§ 3612. Enforcement by Secretary

(a) Election of judicial determination

When a charge is filed under section 3610 of this title, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than 20 days after the receipt by the electing person of service under section 3610(h) of this title or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

(b) Administrative law judge hearing in absence of election

If an election is not made under subsection (a) of this section with respect to a charge filed under section 3610 of this title, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 3610 of this title. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of Title 5. The administrative law judge shall conduct the hearing at a place

in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

. . . .

(g) Hearings, findings and conclusions, and order

(1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. . . .

. . . .

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Secretary shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review) –

(A) send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and

(B) recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).

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§ 3613. Enforcement by private persons

(a) Civil action

(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding

under this subchapter was pending with respect to a complaint or charge under this subchapter based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 3610(a) of this title and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this subchapter with respect to such charge.

. . . .

(c) Relief which may be granted

(1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or

other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a) of this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

. . . .

(e) Intervention by Attorney General

Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 3614(e) of this title in a civil action to which such section applies.

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§ 3614. Enforcement by Attorney General

(a) Pattern or practice cases

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

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§ 3614a. Rules to implement subchapter

The Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this subchapter. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section.

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§ 3617. Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

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* * *

Title 24, Code of Federal Regulations

§ 100.20 Definitions

Broker or *Agent* includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

24 C.F.R. § 100.20 (2002)

***Former* § 103.20 Persons against whom complaints may be filed.**

(a) A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to engage, in a discriminatory housing practice.

(b) A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising or financing of dwellings or the provision of brokerage services relating to the sale or rental of dwellings if that other person, acting within the scope of his or her authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

24 C.F.R. § 103.20 (1999).

California Business & Professions Code

§ 10000. Short title

This part may be cited as the Real Estate Law.

(Added by Stats.1943, c. 127, § 1) (West 1987).

§ 10006. Person

"Person" includes corporation, company and firm.

(Added by Stats.1943, c. 127, p. 828, § 1. Amended by Stats.1968, c. 75, p. 222, § 1.)

§ 10011. Licensee

"Licensee," when used without modification, refers to a person, whether broker or salesman, licensed under any of the provisions of this part.

(Added by Stats.1943, c. 127, p. 829, § 1.)

§ 10032. Broker-salesperson relationship; independent contractor or employee; obligations to public

(a) All obligations created under Section 10000, and following, all regulations issued by the commissioner relating to real estate salespersons, and all other obligations of brokers and real estate salespersons to members of the public shall apply regardless of whether the real estate salesperson and the broker to whom he or she is licensed have characterized their relationship as one of "independent contractor" or of "employer and employee."

(b) A real estate broker and a real estate salesperson licensed under that broker may contract between themselves as independent contractors or as employer and employee, for purposes of their legal relationship with and

obligations to each other. Characterization of a relationship as either "employer and employee" or "independent contractor" for statutory purposes, including, but not limited to, withholding taxes on wages and for purposes of unemployment compensation, shall be governed by Section 650 and Sections 13000 to 13054, inclusive, of the Unemployment Insurance Code. For purposes of workers compensation the characterization of the relationship shall be governed by Section 3200, and following, of the Labor Code.

(Added by Stats.1991, c. 679 (S.B.630), § 1.)

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§ 10130. Necessity of license; complaints for violations; prosecutor

It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the department.

The commissioner may prefer a complaint for violation of this section before any court of competent jurisdiction, and the commissioner and his counsel, deputies or assistants may assist in presenting the law or facts at the trial.

It is the duty of the district attorney of each county in this state to prosecute all violations of this section in their respective counties in which the violations occur.

(Added by Stats.1943, c. 127, p. 835, § 1. Amended by Stats.1969, c. 138, p. 293, § 13, eff. Sept. 11, 1969.)

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§ 10131. Real estate broker

A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

(a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity.

(b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.

(c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.

(d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

(e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or

on a business opportunity, and performs services for the holders thereof.

(Added by Stats.1943, c. 127, p. 835, § 1. Amended by Stats.1955, c. 1678, p. 3013, § 1; Stats.1959, c. 2116, p. 4933, § 3; Stats.1959, c. 2117, p. 4939, § 4; Stats.1960, 1st Ex.Sess., c. 45, p. 388, § 1; Stats.1961, c. 886, p. 2324, § 4, eff. June 28, 1961; Stats.1965, c. 172, p. 1134, § 5, operative Jan. 2, 1966; Stats.1984, c. 177, § 1.)

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§ 10132. Salesman

A real estate salesman within the meaning of this part is a natural person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6.

(Added by Stats.1943, c. 127, p. 832, § 1. Amended by Stats.1955, c. 1678, p. 3013, § 2; Stats.1959, c. 2116, p. 4933, § 4, eff. July 20, 1959; Stats.1959, c. 2117, p. 4939, § 5; Stats.1960, 1st Ex.Sess., c. 45, p. 388, § 2; Stats.1961, c. 886, p. 2326, § 8, eff. June 28, 1961; Stats.1969, c. 928, p. 1855, § 2, operative Jan. 2, 1970; Stats.1974, c. 1351, p. 2932, § 3, operative July 1, 1975. Amended by Stats.1996, c. 587 (A.B.2711), § 2.)

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§ 10137. Unlicensed persons, employment; salesmen, payments through broker; violations

It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real

estate salesman licensed under the broker employing or compensating him; provided, however, that a licensed real estate broker may pay a commission to a broker of another State.

No real estate salesman shall be employed by or accept compensation from any person other than the broker under whom he is at the time licensed.

It is unlawful for any licensed real estate salesman to pay any compensation for performing any of the acts within the scope of this chapter to any real estate licensee except through the broker under whom he is at the time licensed.

For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee, in accordance with the provisions of this part relating to hearings.

(Added by Stats.1943, c. 127, p. 836, § 1. Amended by Stats.1945, c. 660, p. 1316, § 1.)

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§ 10137.1. Partnership; performance of acts for which real estate broker license required

Nothing contained in this division shall preclude a partnership from performing acts for which a real estate broker license is required, provided every partner through whom the partnership so acts is a licensed real estate broker.

(Added by Stats.1968, c. 75, p. 222, § 2.)

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§ 10150. Brokers; application; license examination

(a) Application for the real estate broker license examination shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the broker examination application. The application for the broker examination shall be accompanied by the real estate broker license examination fee.

(b) Persons who have been notified by the commissioner that they passed the real estate broker license examination may apply for a real estate broker license. Application for the real estate broker license shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the broker license application. The application for the real estate broker license shall be accompanied by the appropriate fee.

(Added by Stats.1943, c. 127, p. 838, § 1. Amended by Stats.1947, c. 496, p. 1477, § 2; Stats.1965, c. 1489, p. 3470, § 1, operative Jan. 2, 1966; Stats.1967, c. 242, p. 1375, § 2; Stats.1969, c. 98, p. 220, § 1. Amended by Stats.1989, c. 640, § 2.)

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§ 10150.6. Brokers; experience and training qualifications

The Real Estate Commissioner shall not grant an original real estate broker's license to any person who has not held a real estate salesman's license for at least two years and qualified for renewal real estate salesman status, within the five-year period immediately prior to the date of his application for the broker's license, and during such time was not actively engaged in the business of real estate salesman, except that an applicant for a real

estate broker's license having at least the equivalent of two years' general real estate experience or graduation from a four-year college or university course, which course included specialization in real estate, files a written petition with the Department of Real Estate setting forth his qualifications and experience, and the commissioner approves, he may be issued a real estate broker's license immediately upon passing the examination and satisfying the other requirements of this article.

(Added by Stats.1949, c. 826, p. 1573, § 10. Amended by Stats.1957, c. 549, p. 1643, § 14; Stats.1961, c. 261, p. 1290, § 1; Stats.1963, c. 921, § 1; Stats.1969, c. 138, p. 293, § 14, eff. Sept. 11, 1969; Stats.1976, c. 375, p. 1023, § 7.)

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§ 10151. Salespersons; application; license examination

(a) Application for the real estate salesperson license examination shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the salesperson examination application. The application for the salesperson examination shall be accompanied by the real estate salesperson license examination fee.

(b) Persons who have been notified by the commissioner that they passed the real estate salesperson examination may apply for a real estate salesperson license. Application for the real estate salesperson license application shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the salesperson license application. The application for the real estate salesperson license shall be accompanied by the appropriate fee.

(Added by Stats.1943, c. 127, p. 838, § 1. Amended by Stats.1947, c. 496, p. 1477, § 3; Stats.1965, c. 1489, p. 3471, § 3, operative Jan. 2, 1966; Stats.1968, c. 397, p. 831, § 3. Amended by Stats.1989, c. 640, § 3.)

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§ 10152. Proof of character; hearing

The commissioner may require any other proof he or she may deem advisable concerning the honesty and truthfulness of any applicant for a real estate license, or of the officers, directors, or persons owning more than 10 percent of the stock, of any corporation making application therefor, before authorizing the issuance of a real estate license. For this purpose the commissioner may call a hearing in accordance with this part relating to hearings. To assist in his or her determination the commissioner shall require every original applicant to be fingerprinted.

(Added by Stats.1943, c. 127, p. 838, § 1. Amended by Stats.1968, c. 75, p. 222, § 2.5; Stats.1972, c. 354, p. 667, § 1; Stats.1977, c. 247, p. 1132, § 1. Amended by Stats.1988, c. 521, § 1.)

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§ 10153. Examination

In addition to the proof of honesty and truthfulness required of any applicant for a real estate license, the commissioner shall ascertain by written examination that the applicant, and in case of a corporation applicant for a real estate broker's license that each officer, or agent thereof through whom it proposes to act as a real estate licensee, has all of the following:

(a) An appropriate knowledge of the English language, including reading, writing, and

spelling and of arithmetical computations common to real estate and business opportunity practices.

(b) An understanding of the principles of real estate and business opportunity conveyancing, the general purposes and general legal effect of agency contracts, deposit receipts, deeds, mortgages, deeds of trust, chattel mortgages, bills of sale, land contracts of sale and leases, and of the principles of business and land economics and appraisals.

(c) A general and fair understanding of the obligations between principal and agent, of the principles of real estate and business opportunity practice and the canons of business ethics pertaining thereto, of the provisions of this part, of Chapter 1 (commencing with Section 11000) of Part 2, and of the regulations of the Real Estate Commissioner as contained in Title 10 of the California Administrative Code.

(Added by Stats.1943, c. 127, p. 839, § 1. Amended by Stats.1965, c. 172, p. 1136, § 10, operative Jan. 2, 1966; Stats.1968, c. 75, p. 222, § 3; Stats.1977, c. 247, p. 1132, § 2; Stats.1981, c. 714, p. 2583, § 30.)

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§ 10153.2. Educational requirements of applicants for real estate broker's license; waiver; credit for other courses

(a) An applicant to take the examination for an original real estate broker license shall also submit evidence, satisfactory to the commissioner, of successful completion, at an accredited institution, of:

(1) A three-semester unit course, or the quarter equivalent thereof, in each of the following:

(A) Real estate practice.

(B) Legal aspects of real estate.

(C) Real estate appraisal.

(D) Real estate financing.

(E) Real estate economics or accounting.

(2) A three-semester unit course, or the quarter equivalent thereof, in three of the following:

(A) Advanced legal aspects of real estate.

(B) Advanced real estate finance.

(C) Advanced real estate appraisal.

(D) Business law.

(E) Escrows.

(F) Real estate principles.

(G) Property management.

(H) Real estate office administration.

(I) Mortgage loan brokering and lending.

(J) Computer applications in real estate.

(b) The commissioner shall waive the requirements of this section for an applicant who is a member of the

State Bar of California and shall waive the requirements for which an applicant has successfully completed an equivalent course of study as determined under Section 10153.5.

(c) The commissioner shall extend credit under this section for any course completed to satisfy requirements of Section 10153.3 or 10153.4.

(Added by Stats.1984, c. 66, § 2. Amended by Stats.1993, c. 541 (A.B.1902), § 1; Stats.2001, c. 26 (S.B.329), § 1.)

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§ 10153.3. Educational requirements of applicants for taking the examination for a real estate salesperson license; waiver

In order to take an examination for a real estate salesperson license after January 1, 1986, an applicant shall submit evidence, satisfactory to the commissioner, of successful completion, at an accredited institution, of a three-semester unit course, or the quarter equivalent thereof, in real estate principles.

The commissioner shall waive the requirements of this section for an applicant who is a member of the State Bar of California, or who has completed an equivalent course of study, as determined under Section 10153.5, or who has qualified to take the examination for an original real estate broker license by satisfying the requirements of Section 10153.2.

(Added by Stats.1984, c. 66, § 3. Amended by Stats.1990, c. 728 (A.B.3070), § 3.)

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§ 10157. Authority personal to licensee

No real estate license gives authority to do any act specified in this chapter to any person, other than the person to whom the license is issued.

(Added by Stats.1943, c. 127, p. 840, § 1.)

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§ 10158. Corporations; additional licenses

When a real estate license is issued to a corporation, if it desires any of its officers other than the officer designated by it pursuant to Section 10211, to act under its license as a real estate broker, it shall procure an additional license to so employ each of such additional officers.

(Added by Stats.1943, c. 127, p. 830, § 1. Amended by Stats.1949, c. 826, p. 1571, § 2; Stats.1968, c. 75, p. 223, § 5.)

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§ 10159. Corporations; authority and status of licensed officer

Each officer of a corporation through whom it is licensed to act as a real estate broker is, while so employed under such license, a licensed real estate broker, but licensed only to act as such for and on behalf of the corporation as an officer.

(Added by Stats.1943, c. 127, p. 840, § 1. Amended by Stats.1968, c. 75, p. 223, § 6.)

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§ 10159.2. Responsibility of officer in charge for performance of acts for which real estate license required

(a) The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

(b) A corporate broker licensee that has procured additional licenses in accordance with Section 10158 through officers other than the officer designated pursuant to Section 10211 may, by appropriate resolution of its board of directors, assign supervisory responsibility over salespersons licensed to the corporation to its broker-officers.

(c) A certified copy of any resolution of the board of directors assigning supervisory responsibility over real estate salespersons licensed to the corporation shall be filed with the Real Estate Commissioner within five days after the adoption or modification thereof.

(Added by Stats.1979, c. 595, p. 1856, § 1, operative July 1, 1980.)

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§ 10159.5. Application for license to be issued under fictitious name

Every person applying for a license under this chapter who desires to have such license issued under a fictitious business name shall file with his application a certified

copy of his fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.

(Added by Stats.1957, c. 510, p. 1548, § 1. Amended by Stats.1970, c. 618, p. 1222, § 2.)

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§ 10162. Place of business; license provisions

Every licensed real estate broker shall have and maintain a definite place of business in the State of California which shall serve as his office for the transaction of business. This office shall be the place where his license is displayed and where personal consultations with clients are held.

No real estate license authorizes the licensee to do business except from the location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8.

(Added by Stats.1943, c. 127, p. 840, § 1. Amended by Stats.1945, c. 660, p. 1322, § 13; Stats.1953, c. 871, p. 2216, § 5; Stats.1968, c. 397, p. 832, § 8.)

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§ 10163. Place of business; branches; additional licenses

If the applicant for a real estate broker's license maintains more than one place of business within the State he shall apply for and procure an additional license for each branch office so maintained by him. Every such application shall state the name of the person and the location of the place or places of business for which such license is desired. The commissioner may determine

whether or not a real estate broker is doing a real estate brokerage business at or from any particular location which requires him to have a branch office license.

(Added by Stats.1943, c. 127, p. 841, § 1.)

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§ 10170. Legislative determination

The Legislature has determined that it is in the public interest of consumer protection and consumer service that all real estate licensees licensed under the provisions of this part comply with continuing education requirements adopted by the commissioner pursuant to this article as a prerequisite to the renewal of real estate licenses on and after January 1, 1981.

(Added by Stats.1976, c. 1346, p. 6132, § 6.)

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§ 10170.5. Renewal of license; required educational courses

(a) Except as otherwise provided in Sections 10153.4 and 10170.8, no real estate license shall be renewed unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including all of the following:

(1) A three-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.

(2) A three-hour course in agency relationships and duties in a real estate brokerage practice, including instruction in the disclosures to be made and the confidences to be kept in the various agency relationships between licensees and the parties to real estate transactions.

(3) A three-hour course in trust fund accounting and handling.

(4) A three-hour course in fair housing.

(5) Not less than 18 clock hours of courses or programs related to consumer protection, and designated by the commissioner as satisfying this purpose in his or her approval of the offering of these courses or programs, which shall include, but not be limited to, forms of real estate financing relevant to serving consumers in the marketplace; land use regulation and control; pertinent consumer disclosures; agency relationships; capital formation for real estate development; fair practices in real estate; appraisal and valuation techniques; landlord-tenant relationships; energy conservation; environmental regulation and consideration; taxation as it relates to consumer decisions in real estate transactions; probate and similar disposition of real property; governmental programs such as revenue bond activities, redevelopment, and related programs; business opportunities; and mineral, oil, and gas conveyancing.

(6) Other courses and programs that will enable a licensee to achieve a high level of competence in serving the objectives of consumers who may engage the services of licensees to secure the transfer, financing, or similar objectives with respect to real property, including organizational

and management techniques that will significantly contribute to this goal.

(b) Except as otherwise provided in Section 10170.8, no real estate license shall be renewed for a licensee who already has renewed under subdivision (a), unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including a six-hour update survey course that covers the subject areas specified in paragraphs (1) to (4), inclusive, of subdivision (a).

(c) Any denial of a license pursuant to this section shall be subject to Section 10100.

(Added by Stats.1994, c. 10 (A.B.244), § 4, eff. Feb. 23, 1994, operative Jan. 1, 1996. Amended by Stats.1997, c. 232 (A.B.447), § 3; Stats.1998, c. 507 (A.B.1770), § 1.)

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§ 10171.5. Officer of corporate broker; necessity of compliance

A person who is licensed as a real estate broker only as an officer of a corporate broker pursuant to Section 10158 or 10211 shall not be eligible for the renewal of such license nor for the issuance of a license in an individual capacity or as an officer of a corporate broker licensed pursuant to Section 10158 or 10211, unless and until such person has completed the continuing education requirements of this article.

(Formerly § 10171.1, added by Stats.1980, c. 263, p. 536, § 2. Renumbered § 10171.5 and amended by Stats.1983, c. 413, § 4.)

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§ 10175. Authority to revoke or suspend licenses

Upon grounds provided in this article and the other articles of this chapter, the license of any real estate licensee may be revoked or suspended in accordance with the provisions of this part relating to hearings.

(Added by Stats.1943, c. 127, p. 841, § 1.)

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§ 10176. Investigations; conduct of business; grounds for suspension or revocation

The commissioner may, upon his own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

(b) Making any false promises of a character likely to influence, persuade or induce.

(c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salesmen.

(d) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.

(e) Commingling with his own money or property the money or other property of others which is received and held by him.

(f) Claiming, demanding, or receiving a fee, compensation or commission under any exclusive agreement authorizing or employing a licensee to perform any acts set forth in Section 10131 for compensation or commission where such agreement does not contain a definite, specified date of final and complete termination.

(g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission or profit or the failure of a licensee to reveal to the employer of such licensee the full amount of such licensee's compensation, commission or profit under any agreement authorizing or employing such licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of such agreement, whether evidenced by documents in an escrow or by any other or different procedure.

(h) The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing such licensee to sell, buy, or exchange real estate or a business opportunity for compensation or commission, except when such licensee prior to or coincident with election to exercise such option to purchase reveals in writing to the employer the full amount

of licensee's profit and obtains the written consent of the employer approving the amount of such profit.

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(j) Obtaining the signature of a prospective purchaser to an agreement which provides that such prospective purchaser shall either transact the purchasing, leasing, renting or exchanging of a business opportunity property through the broker obtaining such signature, or pay a compensation to such broker if such property is purchased, leased, rented or exchanged without the broker first having obtained the written authorization of the owner of the property concerned to offer such property for sale, lease, exchange or rent.

(Added by Stats.1943, c. 127, p. 841, § 1. Amended by Stats.1945, c. 660, p. 1317, § 4; Stats.1949, c. 826, p. 1571, § 5; Stats.1953, c. 762, p. 2025, § 2; Stats.1955, c. 1467, p. 2675, § 1; Stats.1965, c. 172, p. 1137, § 11, operative Jan. 2, 1966; Stats.1967, c. 242, p. 1375, § 3.)

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§ 10177. Grounds

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of any material false statement or representation concerning his or her business, or any business opportunity or any land or subdivision (as defined in Chapter 1 (commencing with Section 11000) of Part 2) offered for sale.

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(e) Willfully used the term "realtor" or any trade name or insignia of membership in any

real estate organization of which the licensee is not a member.

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(g) Demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

(i) Has used his or her employment by a governmental agency in a capacity giving access

to records, other than public records, in a manner that violates the confidential nature of the records.

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in any order granting a restricted license.

(l) Solicited or induced the sale, lease, or listing for sale or lease of residential property on the ground, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools due to the present or prospective entry into the neighborhood of a person or persons of another race, color, religion, ancestry, or national origin.

(m) Violated the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Corporations pertaining thereto.

(n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or the regulations of the Commissioner of Corporations pertaining thereto.

(o) Failed to disclose to the buyer of real property, in a transaction in which the licensee is an agent for the buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership interest in the property by a person related

to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee has a special relationship shall be disclosed to the buyer.

(p) Violated Section 10229.

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock, the commissioner may not deny the issuance of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation.

(Added by Stats.1943, c. 127, p. 842, § 1. Amended by Stats.1949, c. 826, § 6; Stats.1953, c. 762, § 3; Stats.1955, c. 1467, § 2; Stats.1959, c. 1873, § 1; Stats.1961, c. 886, § 18, eff. June 28, 1961; Stats.1963, c. 1960, § 7, operative Sept. 1, 1964; Stats.1965, c. 172, § 12, operative Jan. 2, 1966; Stats.1965, c. 1223, § 1; Stats.1970, c. 1400, § 1, operative Jan. 1, 1971; Stats.1971, c. 438, § 10; Stats.1976, c. 1346, § 7; Stats.1977, c. 991, § 2; Stats.1979, c. 595, § 2, operative July 1, 1980. Amended by Stats.1987, c. 588, § 1; Stats.1988, c. 160, § 4; Stats.1988, c. 521, § 2; Stats.1989, c. 1360, § 7; Stats.1990, c. 1335 (A.B.3594), § 1; Stats.1998, c. 507 (A.B.1770), § 2; Stats.1999, c. 83 (S.B.966), § 7; Stats.2001, c. 389 (A.B.795), § 1.)

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§ 10211. Corporation license

If the licensee is a corporation, the license issued to it entitles one officer thereof, on behalf of the corporation, to engage in the business of real estate broker without the payment of any further fee, such officer to be designated in the application of the corporation for a license. For each officer other than the officer so designated, through whom it engages in the business of real estate broker, the appropriate original or renewal fee is to be paid in addition to the fee paid by the corporation.

(Added by Stats.1943, c. 127, p. 843, § 1. Amended by Stats.1947, c. 496, p. 1478, § 11; Stats.1949, c. 826, p. 1571, § 3; Stats.1956, c. 4, p. 125, § 15.)

Title 10, California Code of Regulations

§ 2720. Minimum Age.

A real estate broker license shall not be issued to a person who has not attained the age of 18 years.

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§ 2725 Broker Supervision.

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

(a) Transactions requiring a real estate license.

(b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.

(c) Filing, storage and maintenance of such documents.

(d) The handling of trust funds.

(e) Advertising of any service for which a license is required.

(f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.

(g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of

salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

(Eff. 11-13-96, Register 96, No. 46).

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§ 2731. Use of False or Fictitious Name.

(a) A license[e] shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name.

(b) The Department shall issue a license required under the Real Estate Law only in the legal name of the licensee or in the fictitious business name of a broker. . . .

(Eff. 7/31/83, Register 83, No. 30).

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§ 2740. Broker Officers.

No acts for which a real estate license is required may be performed for, or in the name of, a corporation when there is no officer of the corporation licensed under Section 10158 or 10211.

(Eff. 11-13-96, Register 96, No. 46).

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§ 2743. Assignment of Supervisory Responsibility.

(a) A resolution assigning supervisory responsibility over salespersons licensed to a corporate broker is in compliance with Section 10159.2 of the Code if the assignment is made by reference to a specified business address or addresses of the corporate broker rather than by the listing of the names of salespersons subject to the supervision of the broker officer.

(b) In filing the resolution with the Department, the following information shall be furnished on a form prescribed by the Department:

(1) Name, business address and license number of the corporate broker.

(2) Name of the individual broker licensee who was responsible for supervision of the salespersons in question immediately preceding the effective date of the resolution.

(Eff. 8-8-80, Register 80, No. 28).

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§ 2746. Corporate Real Estate Brokers, Officers, Directors and Shareholders.

(a) At the time of application for, or in the reinstatement of, an original real estate broker license, the designated officer shall file a background statement of information for each director, the chief executive officer, the president, first level vice presidents, secretary, chief financial officer, subordinate officers with responsibility for forming policy of the corporation and all natural persons owning or controlling more than ten percent of its shares, if such person has been the subject of any of the following:

(1) Received an order or judgment issued by a court or governmental agency during the preceding 10 years temporarily or permanently restraining or enjoining any business conduct, practice or employment;

(2) Has had a license to engage in or practice real estate or other regulated profession, occupation or vocation denied, suspended or revoked during the preceding 10 years;

(3) Engaged in acts requiring a real estate license of any state without the benefit of a valid license or permit authorizing that conduct during the preceding 10 years which have been enjoined by a court of law or administrative tribunal;

(4) Been convicted of a crime which is substantially related to the qualifications, functions or duties of a licensee of the Department as specified in Section 2910 of these Regulations (excluding drunk driving, reckless driving and speeding violations).

(b) The background statement shall be set forth in DRE Form 212 and shall inquire only about the information to be disclosed pursuant to subdivision (a). The background statement must be verified and completed by each corporate officer, director or stockholder as named in subdivision (a) to the fullest extent of the signatory's actual knowledge.

(c) Whenever there is a change in the persons whose background statements are required to be on file with the Department for a corporate licensee pursuant to subdivision (a) or an addition to the persons required to file statements pursuant to subdivision (a), the designated officer of the corporation shall, within 30 days thereafter,

file with the Department a background statement of information for each new or changed person.

(Eff. 1-29-98, Register 98, No. 1).

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§ 2780. Discriminatory Conduct As the Basis for Disciplinary Action.

Prohibited discriminatory conduct by a real estate licensee based upon race, color, sex, religion, ancestry, physical handicap, marital status or national origin includes, but is not limited to, the following:

(a) Refusing to negotiate for the sale, rental or financing of the purchase of real property or otherwise making unavailable or denying real property to any person because of such person's race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

(b) Refusing or failing to show, rent, sell or finance the purchase of real property to any person or refusing or failing to provide or volunteer information to any person about real property, or channeling or steering any person away from real property, because of that person's race, color, sex, religion, ancestry, physical handicap, marital status or national origin or because of the racial, religious, or ethnic composition of any occupants of the area in which the real property is located.

It shall not constitute discrimination under this subdivision for a real estate licensee to refuse or fail to show, rent, sell or finance the purchase of real property to any person having a physical handicap because of the presence of hazardous conditions or architectural barriers to

the physically handicapped which conform to applicable state or local building codes and regulations.

(c) Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin against any person in the sale or purchase or negotiation or solicitation of the sale or purchase or the collection of payment or the performance of services in connection with contracts for the sale of real property or in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of this state as to the acquiring, financing, holding or transferring of real property.

(d) Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin against any person in the terms, conditions or privileges of sale, rental or financing of the purchase of real property.

This subdivision does not prohibit the sale price, rent or terms of a housing accommodation containing facilities for the physically handicapped to differ reasonably from a housing accommodation not containing such facilities.

(e) Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin against any person in providing services or facilities in connection with the sale, rental or financing of the purchase of

real property, including but not limited to: processing applications differently, referring prospects to other licensees because of the prospect's race, color, sex, religion, ancestry, physical handicap, marital status or national origin, using with discriminatory intent or effect, codes or other means of identifying minority prospects or assigning real estate licensees on the basis of a prospective client's race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of this state as to the acquiring, financing, holding or transferring of real property.

(f) Representing to any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status or national origin that real property is not available for inspection, sale or rental when such real property is in fact available.

(g) Processing an application more slowly or otherwise acting to delay, hinder or avoid the sale, rental or financing of the purchase of real property on account of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of a potential owner or occupant.

(h) Making any effort to encourage discrimination against persons because of their race, color, sex, religion, ancestry, physical handicap, marital status or national origin in the

showing, sale, lease or financing of the purchase of real property.

(i) Refusing or failing to cooperate with or refusing or failing to assist another real estate licensee in negotiating the sale, rental or financing of the purchase of real property because of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of any prospective purchaser or tenant.

(j) Making any effort to obstruct, retard or discourage the purchase, lease or financing of the purchase of real property by persons whose race, color, sex, religion, ancestry, physical handicap, marital status or national origin differs from that of the majority of persons presently residing in a structural improvement to real property or in an area in which the real property is located.

(k) Performing any acts, making any notation, asking any questions or making or circulating any written or oral statement which when taken in context, expresses or implies a limitation, preference or discrimination based upon race, color, sex, religion, ancestry, physical handicap, marital status or national origin; provided, however, that nothing herein shall limit the administering of forms or the making of a notation required by a federal, state or local agency for data collection or civil rights enforcement purposes; or in the case of a physically handicapped person, making notation, asking questions or circulating any written or oral statement in order to serve the needs of such a person.

(l) Making any effort to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of such person's

having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by a federal or state law, including but not limited to: assisting in any effort to coerce any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status or national origin to move from, or to not move into, a particular area; punishing or penalizing real estate licensees for their refusal to discriminate in the sale or rental of housing because of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of a respective purchaser or lessee; or evicting or taking other retaliatory action against any person for having filed a fair housing complaint or for having undertaken other lawful efforts to promote fair housing.

(m) Soliciting of sales, rentals or listings of real estate from any person, but not from another person within the same area because of differences in the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of such persons.

(n) Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin in informing persons of the existence of waiting lists or other procedures with respect to the future availability of real property for purchase or lease.

(o) Making any effort to discourage or prevent the rental, sale or financing of the purchase of real property because of the presence or absence of occupants of a particular race, color, sex, religion, ancestry, physical handicap, marital status or national origin, or on the basis of the

future presence or absence of a particular race, color, sex, religion, ancestry, physical handicap, marital status or national origin, whether actual, alleged or implied.

(p) Making any effort to discourage or prevent any person from renting, purchasing or financing the purchase of real property through any representations of actual or alleged community opposition based upon race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

(q) Providing information or advice to any person concerning the desirability of particular real property or a particular residential area(s) which is different from information or advice given to any other person with respect to the same property or area because of differences in race, color, sex, religion, ancestry, physical handicap, marital status or national origin of such persons.

This subdivision does not limit the giving of information or advice to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

(r) Refusing to accept a rental or sales listing or application for financing of the purchase of real property because of the owner's race, color, sex, religion, ancestry, physical handicap, marital status or national origin or because of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of any of the occupants in the area in which the real property is located.

(s) Entering into an agreement, or carrying out any instructions of another, explicit or understood, not to show, lease, sell or finance the purchase of real property because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

(t) Making, printing or publishing, or causing to be made, printed or published, any notice, statement or advertisement concerning the sale, rental or financing of the purchase of real property that indicates any preference, limitation or discrimination because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin, or any intention to make such preference, limitation or discrimination.

This subdivision does not prohibit advertising directed to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

(u) Using any words, phrases, sentences, descriptions or visual aids in any notice, statement or advertisement describing real property or the area in which real property is located which indicates any preference, limitation or discrimination because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

This subdivision does not prohibit advertising directed to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

(v) Selectively using, placing or designing any notice, statement or advertisement having to do with the sale, rental or financing of the purchase of real property in such a manner as to cause or increase discrimination by restricting or enhancing the exposure or appeal to persons of a particular race, color, sex, [religion,] ancestry, physical handicap, marital status or national origin.

This subdivision does not limit in any way the use of an affirmative marketing program designed to attract persons of a particular race, color, sex, religion, ancestry, physical handicap, marital status or national origin who would not otherwise be attracted to the real property or to the area.

(w) Quoting or charging a price, rent or cleaning or security deposit for a particular real property to any person which is different from the price, rent or security deposit quoted or charged to any other person because of differences in the race, color, sex, religion, ancestry, physical handicap, marital status or national origin or such persons.

This subdivision does not prohibit the quoting or charging of a price, rent or cleaning or security deposit for a housing accommodation containing facilities for the physically handicapped to differ reasonably from a housing accommodation not containing such facilities.

(x) Discriminating against any person because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin in performing any acts in connection with the making of any determination of financial ability or in

the processing of any application for the financing or refinancing of real property.

Nothing herein shall limit the administering of forms or the making of a notation required by a federal, state or local agency for data collection or civil rights enforcement purposes. In any evaluation or determination as to whether, and under what terms and conditions, a particular lender or lenders would be likely to grant a loan, licensees shall proceed as though the lender or lenders are in compliance with Sections 35800 through 35833 of the California Health and Safety Code (The Housing Financial Discrimination Act of 1977).

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of this state as to the acquiring, financing, holding or transferring of real property.

(y) Advising a person of the price or value of real property on the basis of factors, related to the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of residents of an area or of residents or potential residents of the area in which the property is located.

(z) Discriminating in the treatment of, or services provided to, occupants of any real property in the course of providing management services for the real property because of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of said occupants.

This subdivision does not prohibit differing treatment or services to a physically handicapped person because of the physical handicap, marital status in the course of providing management services for a housing accommodation.

(aa) Discriminating against the owners or occupants of real property because of the race, color, sex, religion, ancestry, physical handicap, marital status or national origin of their guests, visitors or invitees.

(bb) Making any effort to instruct or encourage, expressly or impliedly, by either words or acts, licensees or their employees or other agents to engage in any discriminatory act in violation of a federal or state fair housing law.

(cc) Establishing or implementing rules that have the effect of limiting the opportunity for any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status or national origin to secure real property through a multiple listing or other real estate service.

(dd) Assisting or aiding in any way, any person in the sale, rental or financing of the purchase of real property where there are reasonable grounds to believe that such person intends to discriminate because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

(Eff. 1/2/81, Register 80, No. 49).

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§ 2781. Panic Selling As the Basis for Disciplinary Action.

Prohibited discriminatory conduct includes, but is not limited to, soliciting sales or rental listings, making written or oral statements creating fear or alarm, transmitting written or oral warnings or threats, or acting in any other manner so as to induce or attempt to induce the sale or lease of real property through any representation, express or implied, regarding the present or prospective entry of one or more persons of another race, color, sex, religion, ancestry, marital status or national origin into an area or neighborhood.

(Eff. 1-2-81, Register 80, No. 49).

* * *

PERTINENT LEGISLATIVE HISTORY RE 1979 AMENDMENTS TO CAL. BUS. & PROF. CODE § 10159.2

SENATE COMMITTEE ON BUSINESS & PROFESSIONS 7/11/79

Staff Analysis of AB 985 (Hannigan)
As Amended May 3, 1979

HISTORY: Assembly Bill 985 was introduced at the request of the Department of Real Estate. It passed the Assembly on Consent.

BACKGROUND: The Business and Professions Code stipulates that a person or persons applying for a corporate license to practice real estate must designate in the application an officer of the proposed corporation who holds a valid real estate broker's license. That person becomes the 'designated officer' of the corporation. The purpose of this provision is to provide the public, in its dealings with real estate corporations, the same licensing protections afforded it in dealing with non-corporate real estate concerns.

As currently worded, however, there is no stipulation in the law as to the designated officer's control or supervisory responsibilities over the corporation. Because the corporation is a legal 'person', acts committed by it or its employees cannot be held against the officer unless that officer took part personally in those actions.

As a result, there is nothing to prevent unlicensed persons from obtaining authorization of a licensee to use that licensee's name and then proceed to carry on business free of any licensee participation or direction. According to the Department of Real Estate, there have been instances of

just such arrangements, with a licensee pocketing a retainer fee but taking no active role in the corporate activities. Action can be taken against such corporations in subsequent cases of breach of the Real Estate Law, and the corporate license is subject to revocation. But there is nothing to stop unscrupulous operators from forming new corporations with the same arrangements. There is no remedy against the licensee who lent his name to the corporation application.

PROPOSED LEGISLATION: AB 985 stipulates that the designated officer named on the corporate license application assumes responsibility for officer's, employee's and salesperson's compliance with the provisions of the Real Estate Law. AB 985 also mandates that failure of the designated officer to exercise reasonable supervision and control over the activities of the corporation is grounds for suspension or revocation of that designated officer's real estate brokers license.

AB 985 further allows real estate corporations to designate, by proper resolution delivered to the Real Estate Commissioner, delegation of supervisory responsibility over salespersons to other licensed brokers who are officers of the corporation.

COMMENTS: AB 985 attempts to insure licensed supervision of real estate corporation activity by holding designated officers personally responsible for that supervision. In this way, holders of brokers licenses will be discouraged from lending their names to arrangements in which they will play the role of 'absentee' designated officer.

This bill is aimed at small, fly-by-night 'corporations' that have exploited existing loopholes in order to evade the

substantive requirements of licensed corporate supervision. According to the Department of Real Estate, established real estate corporations are already careful to ensure licensed supervision, since the good name of their corporations is an invaluable asset.

POSITIONS:

Support – Department of Real Estate
California Association of Realtors

There is no known opposition.

* * *

ASSEMBLY COMMITTEE ON LABOR, EMPLOYMENT, & CONSUMER AFFAIRS Bill Lockyer, Chairman
HEARING DATE: April 24, 1979

BILL: AB 985
AUTHOR: Hannigan
SUBJECT: Real Estate Corporate Licenses

BACKGROUND

The State of California, through the Department of Real Estate, licenses brokers and salespersons engaged in the business of real property sales. Under the law, there exists provisions for the issuance of a broker's license to corporations, entitling them to engage in all the activities permitted to a licensed natural person. One of these provisions requires that a corporation have an individual licensed as a broker in his or her own right, serving as a "designated officer." The corporate license is issued on the basis of this person's qualifications, but remains a totally separate license. While a corporate license might be revoked for corporate misdeeds, the license of the designated officer would remain untouched unless he or she personally

participated in the acts leading to revocation. This duality in licensing leaves the designated officer with only an implied duty to oversee corporate operations. There currently exists no statutory responsibility on the part of the designated officer to supervise the activities of employees as they exercise the corporate license.

There are approximately 11,500 corporate licenses in existence today.

BILL

AB 985 provides that failure of a designated officer to exercise reasonable supervision and control over corporate broker activities is grounds for action against the designated officer's personal broker license. It states the affirmative responsibility of the designated officer to exercise such supervision and control. It also permits corporations to divide up management responsibility among any number of designated officer brokers if such assignment is done by resolution of the board of directors and filed with the Real Estate Commissioner.

ANALYSIS

1. The licensing of corporate "persons" has always been problematic: the state is confronted with the dilemma of guaranteeing the professional competence and proficiency of a legal fiction. Traditionally, the problem is resolved by requiring the direct supervisory control of the corporation's professional actions by a licensed individual who is himself qualified. This is meant to ensure that the corporation knows how to do the job. It is difficult for the state to guarantee the active supervisory role of the licensed individual, however; while a person might be the "designated

officer" or the "responsible managing officer", he or she might only be lending a name and license number to the corporation. Problems in this regard have been especially acute among contractors, where individuals have even advertised their license for "sale" in newspapers. The only way that the active participation of the licensed individual can be ensured is by "piercing the corporate veil" and making the individual licensee vulnerable to action on account of corporate misdeeds, or on account of failure to fulfill corporate responsibilities.

2. Under the terms of the law, real estate brokers are responsible for supervising the activities of their salespersons and employees. The corporate licensee, as a broker, has a similar responsibility, which it cannot fulfill. A paper entity cannot supervise.

3. The granting of the corporate license is predicated upon the qualifications of the designated officer in the first place. It is no injustice to demand that the person standing for the corporation at licensing continue to stand for the corporation. That is an implicit assumption of the law anyway.

4. According to the sponsors of the bill, problems have arisen with small-time operators who establish a number of corporations under the licenses of various "friendly" brokers, then proceed to act in whatever way they choose until detected by the Department. One corporate license may be lifted but others remain, and the brokers party to the offending corporation remain beyond the grasp of the Department. This bill should end such arrangements.

SUPPORT: Dept. of Real Estate

* * *

LEGISLATIVE PROPOSAL – REVISED

DEPARTMENT: Real Estate R-15
SUBJECT: Responsible Managing Employee
PROPOSAL: To require the officer designated by a licensed real estate corporation to supervise the real estate acts of the corporation.

ANALYSIS

A. Detailed

Under existing law, a corporation may obtain a real estate broker license enabling the corporation to perform all acts for which a broker license is required. Business and Professions Code Sections 10153, 10158, 10159 and 10211 provide for the obtaining of a corporate broker license. In order to obtain that license, a corporation must secure the services of a natural person who possesses a real estate broker license. That person becomes the "designated officer" (anything from corporate president to third assistant secretary) of the corporation for real estate licensing purposes. The corporate license is issued largely on the strength of the qualifications of the designated officer. However, since the corporation is a separate licensed entity, the designated officer has, under current law, no further responsibility for corporate licensed acts in which the designated officer does not personally participate. Consequently, there is no affirmative duty on the part of any natural person to supervise corporate licensed acts. Current law allows for disciplinary action against the corporate license but not against the designated officer if that officer did not participate in the wrongful act.

This proposal seeks to create an affirmative duty on the part of the "designated officer" to supervise the activities

of a corporate licensee in performing acts for which a real estate license is required. The bill also makes a failure to exercise such supervisiion [sic] grounds for discipline agains [sic] the designated officer's license. This proposal is similar to legislation currently in effect regarding contractors' licenses (Business and Professions Code Section 7068.1).

The bill allows for the assignment of management responsibility where there is more than one designated officer.

B. Cost

No fiscal impact on this Department or other affected agencies.

HISTORY

None.

ARGUMENTS

In the case of large, well established real estate corporate brokers, this lack of affirmative duty does not create many problems. The established corporations have sufficient interest in retaining their corporate licenses to insure that corporate activities are well monitored and supervised. The need for this legislation arises from the proliferation of small, closely held corporations. It is not unusual to see one person (often unlicensed himself) create three or four corporations and obtain real estate licenses for each of them. Given the ease in obtaining a corporate license, and the relative ease in locating an accommodating "designated officer," there is no incentive to insure that the corporate licensee complies with all provisions of law. If the corporate license is revoked or suspended, licensed

activities could continue under another related corporate license or a new corporation could be formed and a license obtained through the good offices of the original designated officer.

Since the corporate license was issued largely in reliance upon the qualifications and character of the designated officer, it is reasonable to expect that officer to take an active role in the conduct of the corporation's business for which a real estate license is required.

REASONS FOR PROPOSAL

1. The real estate law places the responsibility for supervision of salespersons and employees upon a real estate broker. Even though a corporate real estate licensee is itself a broker, the corporate entity is not as qualified as a natural person to exercise the supervision necessary to insure public protection.

2. Lack of active supervision by a designated officer has resulted in abuses and injury.

3. Since a corporate license is issued based upon the qualifications, experience and good character of the designated officer, that officer should continue to take an active role in the conduct of corporate real estate acts.

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